

STATE OF ILLINOIS)
) SS.
 COUNTY OF SANGAMON)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="button" value="down"/>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PATRICK FLANNIGAN,

Petitioner,

14IWCC0021

vs.

NO: 12 WC 03832

CITY OF SPRINGFIELD,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, medical expenses, temporary total disability and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner has worked for Respondent for 14 years, the last 12 as a Utility Meter Reader. He reads water and electricity meters. Some water meters are in water pits with a metal cover. The metal cover weighs between a couple of pounds and 15-20 pounds. Petitioner must get down on one knee, bend over and open the covers with a pit wrench. The pit wrench looks like a miniature pick axe and weighs a couple of pounds. The older covers have rust or are stripped and can require more force to open. Some meters can be as far as 10 feet down in the pit.
2. Petitioner works 8 hours a day, 5 days a week. He reads 400-600 meters daily, with 250-300 being water meters in pits.
3. Petitioner presented at Urgent Care on November 29, 2011 with complaints of left lower

14IWCC00021

back pain for the first time. He stated that he does a fair amount of walking and bending at work. For a week leading up to that date, he felt a burning sensation down his left hip and leg. He denied any specific injury leading to this. X-rays revealed mild degenerative changes at L4-5. He was diagnosed with low back pain, was prescribed medication and referred to Dr. Western.

4. On December 5, 2011 Petitioner returned to Urgent Care with the same symptoms and stated he was unable to perform his work duties. On December 6th, Dr. Western recognized that Petitioner's left leg problem was separate from his right leg issue. A lumbar MRI was performed and Petitioner was diagnosed with a herniated disc. At that point he realized he had suffered a work-related injury.
5. On January 26, 2012, Dr. Payne noted that Petitioner's symptoms were significantly better following the epidural injection, and that Petitioner would like to return to work.
6. Petitioner underwent conservative care through March 30, 2012. On that date he indicated to Dr. Payne's Nurse Practitioner that he was doing well. He was assured that as long as his symptoms were improving and he had no constant pain, his body was healing.
7. Petitioner now has no more left leg or low back complaints and continues to work full duty. He occasionally feels low back discomfort after a lot of walking, bending and stooping.

The Commission affirms the Arbitrator's rulings on the issues of accident, medical expenses and temporary total disability.

However, the Commission modifies the Arbitrator's ruling regarding nature and extent. The Arbitrator awarded Petitioner benefits to the extent of a 7.5% loss of use of his person as a whole. The Commission views the evidence slightly different; pointing out that Petitioner's pain complaints have subsided and that he has been able to return to full duty work. Accordingly, the Commission modifies the award down to a 5% loss of use of his person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner is entitled to an award of 4 weeks of temporary total disability benefits (12/30/11-1/26/12) at a rate of \$812.63 per week under §8(b) of the Act. The total temporary total disability amount equals \$3,250.52.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$695.78 per week for a period of 25 weeks, for the reason that Petitioner suffered a 5% loss of use of his person as a whole, as provided in §8(d)(2) of the Act. The total permanent partial disability amount equals \$17,394.50.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner is entitled to an award of \$2,888.00 for reasonable and necessary medical expenses under §8(a) of the Act.

14IWCC0021

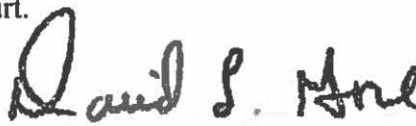
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall reimburse Petitioner \$120.00 for out of pocket expenses.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury. Respondent shall indemnify and hold Petitioner harmless for any subrogation claim asserted by any providers of services for which Respondent is receiving said credit.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

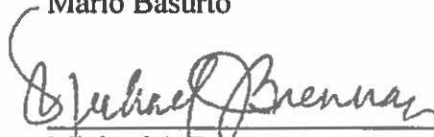
DATED: JAN 17 2014
O: 11/21/13
DLG/wde
45



David L. Gore



Mario Basurto



Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

FLANNIGAN, PATRICK

Employee/Petitioner

Case# 12WC003832

14IWCC0021

CITY OF SPRINGFIELD

Employer/Respondent

On 4/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2217 SHAY & ASSOCIATES
TIMOTHY M SHAY
1030 S DURKIN DR
SPRINGFIELD, IL 62704

0332 LIVINGSTONE MUELLER ET AL
L ROBERT MUELLER
P O BOX 335
SPRINGFIELD, IL 62705

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0021

PATRICK FLANNIGAN

Employee/Petitioner

Case # 12 WC 3832

v.

Consolidated cases: _____

CITY OF SPRINGFIELD

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanolli**, Arbitrator of the Commission, in the city of **Springfield**, on **March 7, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

14IWCC0021

FINDINGS

On December 12, 2011, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$63,384.88; the average weekly wage was \$1,218.94.

On the date of accident, Petitioner was 42 years of age, *single* with 0 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$0.

Respondent is entitled to a credit of \$443.00 under Section 8(j) of the Act.

ORDER

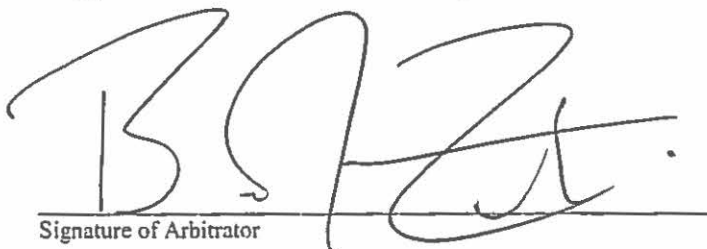
Respondent shall pay Petitioner's outstanding medical bills, as set forth in Petitioner's Exhibit 9 (outstanding bills totaling \$2,888.00), directly to the medical providers, pursuant to Section 8(a) of the Act and subject to the medical fee schedule, Section 8.2 of the Act. Respondent shall receive a credit in the amount of \$443.00 for all medical bills paid by Healthlink. Respondent shall indemnify and hold Petitioner harmless for any subrogation claim asserted by Healthlink. Respondent shall also pay Petitioner \$120.00 as reimbursement for out-of-pocket medical expenses paid by Petitioner.

Respondent shall pay Petitioner temporary total disability benefits of \$812.63/week for 4 weeks, commencing December 30, 2011 through January 26, 2012, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$695.78/week for 37.5 weeks, because the injuries sustained caused the 7.5% loss of use to the person as a whole, as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator

03/27/2013
Date

APR 5- 2013

STATE OF ILLINOIS)
)SS
COUNTY OF SANGAMON)

14IWCC0021

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

PATRICK FLANNIGAN
Employee/Petitioner

v.

Case # 12 WC 3832

CITY OF SPRINGFIELD
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Petitioner, Patrick Flannigan, is claiming a repetitive trauma injury to his back with a manifestation date of December 28, 2011 while employed by Respondent, the City of Springfield. (See Arbitrator's Exhibit 2).

Petitioner has been employed by Respondent for fourteen years. For the past twelve years, he has been in his current position as a utility meter reader. Specifically, Petitioner reads water meters. Petitioner testified that in the City of Springfield, the water meters are kept underground in "water pits" that have to be opened and read. Petitioner testified that he works five days per week, eight hours per day and that he reads an average of 250 to 300 water meters per day.

The water pits are covered with metal covers. Petitioner testified that there are two types of covers for the water pits. Photographs of the two types of meter covers are entered into evidence as Petitioner's Exhibit 10. Petitioner testified that the first photograph depicted the larger meter covers, which weigh approximately fifteen to twenty pounds. (Petitioner's Exhibit (PX) 10). He testified that the second photograph depicted the smaller meter covers usually found in front of residences. (PX 10). He testified that the second type of meter cover only weighs around two pounds, and that the larger cover weighs approximately fifteen to twenty pounds. Petitioner testified that both types of meter covers are closed with one metal nut. (See also PX 10).

Petitioner testified that some of the meter covers are decades old. He testified that he has to get down on one knee, bend over every time, and open it with a tool called a pit wrench. The pit wrench weighs about two pounds and looks like a miniature pick axe. Petitioner testified that he wedges the narrow end underneath the lid to open the meter. The wider end fits around the nut. Petitioner testified that some of the older nuts have rusted and that sometimes the nuts are stripped, requiring him to use more force to open the meter cover.

Petitioner testified that when he approaches each water pit, he bends over it, gets on his knees, and uses the pit wrench to unlock the pit nut, and then lifts the lid, reads the meter and enters the readings into his hand held computer. He then places the lid back down and locks the nut. Petitioner testified that he uses his right hand to unlock the nut and open the meter. Petitioner further testified that some of the meters are further down the pit than others. He testified that at some businesses, the meter could be ten feet down the pit. He testified that he frequently has to reach into shallower pits to clear the meter of mud or snow in order to make it readable.

Prior to his presentation for treatment of his back, he visited his primary care physician at Springfield Clinic on August 2, 2011, with complaints of right leg pain down to the ankle. (PX 4). He testified that the pain felt like shin splints and that he could not move his ankle well. He testified that he did not suffer any back pain at that time.

Petitioner was subsequently referred to Dr. Gary Brett Western in the Athletic Care Management department at Springfield Clinic. Petitioner presented to Dr. Western on September 14, 2011. Dr. Western diagnosed Petitioner with right foot drop, which he indicated appeared to be a peripheral issue. As a result of Petitioner's presentation, Dr. Western ordered an EMG. (PX 4). The EMG, which took place on September 26, 2011, indicated Petitioner's right leg pain was caused by axonal type right peroneal neuropathy with denervation and moderate reinnervation. The EMG report further states, "[t]here is no electrophysiologic evidence for an alternate neurogenic lesion including a right lumbar radiculopathy or lumbosacral plexopathy." (PX 11). Petitioner testified that prior to the EMG, he had no symptoms in his lower back or left leg.

On November 29, 2011, Petitioner returned to Springfield Clinic with complaints of left lower back pain that had been troubling him "over the last week or so." (PX 4). He testified that he had burning down his left leg through his hip. He testified that this left leg burning was unrelated to his previous right leg pain. He was examined by Dr. Mary Campbell, who diagnosed Petitioner with low back pain. X-rays revealed some mild degenerative changes at L4-L5, but were otherwise unremarkable. Petitioner was prescribed Skelaxin and re-referred to Dr. Western. (PX 4).

Petitioner returned to Springfield Clinic on December 5, 2011, and was seen by Dr. Melody Schniepp. He complained of pain in the left hip that radiated down the left upper leg. Petitioner indicated that he was a meter reader and was unable to perform his job. He indicated that walking exacerbated the pain; however rest did not alleviate it. Upon examination, Dr. Schniepp indicated that she believed Petitioner's pain had gotten worse since his November 29, 2011 presentation, and that he had developed sciatica symptoms. Dr. Schniepp restricted Petitioner from work as of December 1, 2011 up to December 6, 2011 (days he had already missed plus the next day). (PX 4).

On December 6, 2011, Petitioner presented to Dr. Western. Dr. Western testified via evidence deposition on October 23, 2012. (PX 8). He testified that his practice is 100% orthopedics. (PX 8, p. 6). At his December 6, 2011 office visit, Petitioner indicated that the foot

drop on the right side was getting better, but he had a new problem involving left-sided buttock and leg pain. Dr. Western indicated the pain appeared to be in the L4 distribution, down the anterior thigh, through the knee, and into the lower leg. Petitioner indicated that he had suffered no new injury. Dr. Western examined Petitioner and reviewed his November 29, 2011 x-ray report. He confirmed that Petitioner had degenerative disc changes at L4-L5 and indicated it included end plate spurring and disc space narrowing. Dr. Western diagnosed Petitioner with left lower extremity radiculopathy apparently from the L4 distribution and right peroneal neuropathy, unresolved, with the possibility of a component of L4 radiculopathy on the right side. He ordered an MRI of the lumbar spine on this date. (PX 4).

Petitioner underwent a MRI of his lumbar spine on December 8, 2011. The MRI revealed a left central through subarticular disc protrusion at L3-L4 completely effacing the left lateral recess and proximal neural foramen with impression on the left L3 nerve root. (PX 12).

Petitioner returned to Dr. Western on December 12, 2011 to review his MRI results. Dr. Western indicated that the MRI results were consistent with his L4 radiculopathy. (PX 4). He testified that Petitioner had a fairly large disc herniation and that part of the disc was extruded. (PX 8, p. 19). Dr. Western further opined that it was an acute disc herniation because there was an extruded portion of the disc, meaning the central part of the disc was pushed out of the disc, which indicates an acute process. (PX 8, pp. 19-20). Dr. Western testified this definition of an "acute injury" was one that occurs within a few weeks. (PX 8, p. 35). Dr. Western restricted Petitioner from work until December 27, 2011, and referred him to physical therapy. (PX 4). Petitioner testified that it was at this December 12, 2011 visit with Dr. Western that he realized he suffered a work related injury.

On December 29, 2011, Petitioner returned to Dr. Western. He indicated that he had attempted to return to work, but the long walks, bending, and stooping aggravated his pain. (PX 4). Dr. Western testified that he discussed Petitioner's work activities more during this visit than before because, prior to this visit, he was doing very well. (PX 8, p. 23). At this time, Dr. Western recommended an epidural steroid injection. (PX 4). Petitioner subsequently received an epidural steroid injection from Dr. Western on January 5, 2012. (PX 5).

Petitioner returned to Dr. Western on January 16, 2012, indicating that the epidural steroid injection helped his left leg pain quite a bit, but that he was experiencing numbness and a "pins and needles" sensation of the anterior left thigh. He also complained of some weakness and instability with standing and walking. Physical examination confirmed instability with ambulating with the left leg. Based on his continued complaints, Dr. Western referred Petitioner for consultation with a spine surgeon. He also restricted Petitioner from work until he saw the spine surgeon, Dr. William Payne. (PX 4).

Petitioner presented to Dr. Payne on January 26, 2012, and was also seen by nurse practitioner Jennifer Nicholson. Petitioner indicated that repetitive motion aggravated his pain. Petitioner indicated that he was doing a lot better after his epidural steroid injection, but that he was left with weakness that was improving over time and some aggravating numbness, tingling, and occasional burning, with activity. After reviewing his MRI and x-rays, Ms. Nicholson

indicated that Petitioner had a disc herniation on the left side at L3-L4 which "exactly correlates" with his symptoms. Ms. Nicholson indicated that Petitioner may require a microdiscectomy in the future if his symptoms return or worsen, but that such procedure was not necessary at that time. She instructed Petitioner to resume his normal activities, returned him to work, and advised him to return if his symptoms worsened. (PX 4).

On February 3, 2012, Petitioner presented to Venturini Chiropractic Clinic. Petitioner continued to receive chiropractic and massage treatment from this clinic until February 20, 2012. (PX 6).

On March 30, 2012, Petitioner returned to Dr. Payne's office and was again seen by Nurse Nicholson. Petitioner indicated that a week prior to this visit, he woke up in the middle of the night and his left leg was numb, tingling, and weak. He indicated that this resolved within half an hour. He also indicated that occasionally when he worked hard he experienced some burning in his left leg. Petitioner indicated he had returned to ensure he was not causing any permanent nerve damage. Ms. Nicholson assured Petitioner that as long as his symptoms were improving and he did not develop a constant pain, his body was healing itself. (PX 4).

Dr. Western testified regarding the cause of Petitioner's pain. (PX 8, pp. 23-25). He testified that Petitioner's disc herniation at L3-L4 could be caused by Petitioner's having worked for Respondent since 1997, reading up to 600 meters per day, walking throughout an eight hour day, bending down and opening anywhere from 300 to 400 water pits per day by bending, stooping, and opening the meters with a pit wrench. (PX 8, pp. 23-25). Dr. Western further indicated that if Petitioner continues his job with Respondent as a meter reader, he may be at risk for further aggravations and exacerbations of his condition. (PX 8, p. 31).

Dr. Western further testified that most herniated discs, given time, over multiple months, will become resorbed by the body. (PX 8, p. 30). He testified, however, that it was impossible to know whether a disc has actually resorbed without a MRI. (PX 8, p. 31). He further opined that if the disc does not resorb and the herniation remains large enough to put pressure on the nerve, it is possible for Petitioner to have periodic exacerbations of the problem. (PX 8, p. 31). Dr. Western testified that symptoms of an exacerbation include radiating leg pain, numbness, tingling, burning, and weakness. (PX 8, p. 31). Dr. Western further testified that all of the treatment that he provided to Petitioner was reasonable and necessary. (PX 8, p. 32).

Petitioner testified that he has returned to full duty employment as a meter reader with Respondent. He testified that he no longer has left lower back pain or radiating discomfort in his left leg. He testified that he does have episodes where he feels some left lower back discomfort after a lot of walking, bending, or stooping, which he is frequently required to do at work. He testified that his pain tends to come on towards the end of the work week. However, he testified that the pain was not as severe as before; before his treatment his pain was an 8-9 out of 10, and now it is a 1-2 out of 10.

Petitioner noted that on the four days he returned to work at the end of November 2011, he had indicated on his time sheets that he had not suffered an injury at work. These time sheets

were entered into evidence as Respondent's Exhibit 1. However, Petitioner testified that, to his understanding, the question on the time sheets related to single episode traumas, and that he did not mark that he had suffered an injury because he never suffered a single episode trauma.

Respondent called Don Ott, Petitioner's supervisor, to testify. Mr. Ott testified that he has been the maintenance supervisor for Respondent for approximately eight years and was Petitioner's supervisor for the relevant time period. He testified that the first time he became aware that Petitioner was claiming a work related back injury was on December 30, 2011. Mr. Ott testified that Petitioner filled out required forms at that time.

Mr. Ott testified that Petitioner had given a fair and accurate description of his job. He also confirmed that in order to read the meters, Petitioner has to get on the ground, and that sometimes the meters need to be manually cleaned off before they are read. He testified that there is no ergonomically perfect way to perform the job, and that Petitioner encounters various terrains, holes in the ground, and uneven surfaces.

Petitioner entered into evidence a series of medical bills he claims are for treatment rendered resulting from his alleged work accident. The total medical bills equal \$3,451.00. A total of \$443.00 was paid or adjusted by Healthlink (Respondent's insurance carrier), and \$120 was paid out-of-pocket by Petitioner. The outstanding bill balance for Petitioner's treatment at Springfield Clinic is \$2,777.00, and the outstanding balance at Advanced Center for Pain & Rehab (Venturini Clinic treatment) is \$111.00, making the total outstanding medical bills owed \$2,888.00. (See PX 9).

CONCLUSIONS OF LAW

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?; and

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

After a review of the totality of the evidence, the Arbitrator finds that on December 12, 2011, Petitioner suffered the manifestation of a repetitive trauma injury arising out of and in the course of his employment with Respondent. Relying on the testimony of Petitioner and Mr. Ott, the Arbitrator finds that Petitioner has worked as a meter reader for twelve years, working five days per week and eight hours per day. During this time, he has been required to read an average of 250 to 300 water meters per day. For each meter he reads, he must bend over, get on his knees, use the pit wrench to unlock the pit, and lift the metal lid. Often he must reach into the pits to clear meters of debris.

Relying primarily on the testimony and medical records of Dr. Western, the Arbitrator finds that Petitioner's lower back and left leg pain and herniated disc at L3-L4 were causally connected to his work-related repetitive trauma injury. Petitioner's December 8, 2011 MRI revealed a left central through subarticular disc protrusion at L3-L4 completely effacing the left lateral recess and proximal neural foramen with impression on the left L3 nerve root. (PX 12). Dr. Western indicated in his records that the disc protrusion at L3-L4 was consistent with

Petitioner's symptoms of L4 radiculopathy. (PX 4). Further, Dr. Western testified that Petitioner suffered an acute disc herniation, meaning that the injury occurred over a period of a few weeks or less, because the central part of the disc was pushed out of the disc. (PX 8, pp. 19-20).

Furthermore, when presented with a description of Petitioner's work requirements, including reading up to 600 meters per day, walking through an eight hour day, bending down and opening anywhere from 300 to 400 water pits per day by bending, stooping and opening the meters with a pit wrench, Dr. Western testified that those types of activities could cause a disc herniation at L3-L4. (PX 8, pp. 23-25).

Based on the foregoing, the Arbitrator finds that Petitioner sustained a work related repetitive trauma injury with a manifestation date of December 12, 2011, and that his current condition of ill-being is causally related to his work-related repetitive trauma injury. The Arbitrator notes that Arbitrator's Exhibit 1 (the Request for Hearing form) and Arbitrator's Exhibit 2 (Petitioner's Application for Adjustment of Claim) both indicate a manifestation date of December 28, 2011. However, based on the facts set forth as discussed, *supra*, the appropriate manifestation date would have actually been December 12, 2011, when Petitioner reviewed his MRI results with Dr. Western and testified that it was then that he learned he suffered a work related injury.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Dr. Western testified that all of Petitioner's treatment was reasonable and necessary to treat the repetitive trauma injury to his back. (PX 8, p. 32). Therefore, the Arbitrator finds that all of Petitioner's treatment was reasonable and necessary for treatment of his work-related injuries.

Respondent shall pay the outstanding medical bills, as set forth in Petitioner's Exhibit 9, directly to the medical providers pursuant to the medical fee schedule, Section 8.2 of the Act. The Arbitrator further orders Respondent to reimburse Petitioner in the amount of \$120.00 for out-of-pocket medical expenses paid by Petitioner. Respondent shall be given a credit in the amount of \$443.00 for all bills paid by Healthlink and will indemnify and hold Petitioner harmless for any subrogation claim asserted by Healthlink.

Issue (K): What temporary benefits are in dispute? (TTD)

Petitioner missed four weeks of work from December 30, 2011 through January 26, 2012. He was restricted from work by Dr. Western from January 16, 2012 through January 26, 2012. (PX 7). Furthermore, from December 30, 2011 through January 4, 2012 Petitioner was awaiting his epidural steroid injection. (PX 4). He received the epidural steroid injection on January 5, 2012. (PX 5).

The Arbitrator awards Petitioner temporary total disability benefits of \$812.63 per week for 4 weeks for the time period of December 30, 2011 through January 26, 2012.

Issue (L): What is the nature and extent of the injury?

Petitioner suffered a work-related injury to his lower back. The MRI revealed a left central through subarticular disc protrusion at L3-L4 completely effacing the left lateral recess and proximal neural foramen with impression on the left L3 nerve root. Petitioner underwent conservative treatment, including an epidural steroid injection.

Petitioner has returned to work full duty as a meter reader with Respondent. While Petitioner no longer has constant left lower back pain that radiates into his left leg, he does still have episodes of left lower back discomfort. This lower back discomfort comes on towards the end of the week and is brought on by his work activities of walking, bending, and stooping. His pain can be at a 1-2 out of 10 after a week of work.

Petitioner's date of accident falls after September 1, 2011, and therefore Section 8.1b of the Act shall be discussed concerning permanency. It is noted when discussing the permanency award being issued that no permanent partial disability impairment report pursuant to Sections 8.1b(a) and 8.1b(b)(i) of the Act was offered into evidence by either party. This factor is thereby waived.

Concerning Section 8.1b(b)(ii) of the Act, the Arbitrator notes that the evidence shows that Petitioner's occupation as a meter reader requires him to engage in repetitive physical activity, including a lot of bending and stooping. The Arbitrator concludes that Petitioner's permanent partial disability will be larger based on this regard than an individual who performs lighter intensity work.

Concerning Section 8.1b(b)(iii) of the Act, the Arbitrator notes that Petitioner was 42 years of age on the date of accident. (See Arbitrator's Exhibit 1). At the time of trial, Petitioner was 44 years of age. (See Arbitrator's Exhibit 2). Petitioner likely has some years of work ahead of him, and the Arbitrator has considered Petitioner's age, and gives some weight to this factor.

Concerning Section 8.1b(b)(iv) of the Act, no real evidence was presented to indicate what Petitioner's future earning capacity would be. Therefore, the Arbitrator places no weight on the factor of future earning capacity when determining the permanency award.

Concerning Section 8.1b(b)(v) of the Act, the Arbitrator finds that the medical records corroborated Petitioner's testimony concerning his injury, treatment and permanency. The Arbitrator places great weight on this factor.

Based on the foregoing, the Arbitrator finds that Petitioner has sustained a 7.5% loss of use to the person as a whole pursuant to Section 8(d)2 of the Act. Respondent therefore shall pay Petitioner permanent partial disability benefits in the amount of \$695.78 per week for 37.5 weeks.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
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<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jerry Carpenter,

Petitioner,

14IWCC0022

vs.

NO: 11 WC 17136

State of Illinois, Big Muddy River
Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, medical expenses, notice, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

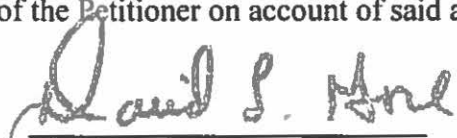
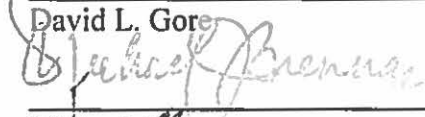
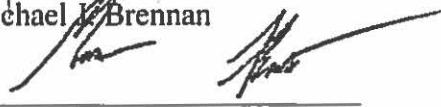
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed November 2, 2012 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: JAN 17 2014

DLG/gal
O: 11/20/13
45


David L. Gore

Michael J. Brennan

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CARPENTER, JERRY

Employee/Petitioner

Case# 10WC042957

11WC017136

SOI/BIG MUDDY RIVER CORRECTIONAL
CENTER

Employer/Respondent

14I3CC0032

On 11/2/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.16% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
AARON L WRIGHT
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

NOV 2 2012



[Signature]
KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)

)SS.

COUNTY OF Williamson)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)(18)) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

14 I W C C 0 0 2 2

Jerry Carpenter

Employee/Petitioner

Case # 10 WC 42957

v.

Consolidated cases: 11 WC 17136

State of Illinois/Big Muddy River Correctional Center

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Herrin**, on **8/16/12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent (for the accident date of 11/24/10)?
- D. ☒ What was the date of the accident (for the accident date of 11/24/10)?
- E. ☒ Was timely notice of the accident given to Respondent (for the accident date of 11/24/10)?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services? (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)
- K. ☒ What temporary benefits are in dispute? (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury? (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other ____

FINDINGS

14IWCC0022

On 3/13/10 & 11/24/10, Respondent *was* operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship *did* exist between Petitioner and Respondent.

On 3/13/10, Petitioner *did* sustain an accident that arose out of and in the course of employment. Petitioner did not sustain an accident on 11/24/10.

Timely notice of the 3/13/10 accident *was* given to Respondent.

Petitioner's current condition of ill-being *is in part* causally related to the accidents.

In the year preceding the injury, Petitioner earned \$67,248.00; the average weekly wage was \$1,293.23.

On the date of accident, Petitioner was 58 years of age, *married* with 0 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$0.

Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.


ORDER

Respondent shall pay Petitioner permanent partial disability benefits of \$664.72/week for 75 weeks, because the injuries sustained caused the 15% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay reasonable and necessary medical services limited to treatment for Petitioner's left shoulder condition, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act. If Petitioner's health carrier should request reimbursement, Respondent shall indemnify and hold Petitioner harmless.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

10/29/12
Date

Findings of Fact

Petitioner is a 58 year old Food Service Supervisor II at the Big Muddy Correctional Center, a position he has held since 2000. Prior to this he was employed as a correctional officer at Menard Correctional Center. He is alleging two accidents. The first claim stems from an incident on March 13, 2010 involving a singular trauma to Petitioner's left shoulder under case number 10 WC 42957. Petitioner's second claim is from an alleged accident date of November 24, 2010, involving repetitive trauma to Petitioner's left hand, arm and elbow under case number 11 WC 17136. Respondent is only disputing the first claim on the issue of whether Petitioner's cardiac condition is causally connected to that accident. Respondent is disputing the second claim on the issues of accident, notice, causation, medical expenses and TTD.

On March 13, 2010 the Petitioner was moving a carton of milk and suffered an injury to his left shoulder. At no point was injury to the Petitioner's arms or elbows, i.e. carpal and cubital tunnel syndrome mentioned or included in a form 45, report of injury to the Petitioner's employer. This claim was approved by Petitioner's employer and the Petitioner began a regiment of treatment with a local surgeon Dr. Dennon Davis lasting from March thru May of 2010. [PX 3]. He then began treatment with Dr. Paletta on November 18th 2010, after being sent there by his attorney,[TX 56] and the record reflects numbness and tingling in the hands and the note also mentions a carpal tunnel diagnosis of 6-7 years prior. [PX 6] Additionally he was given a diagnosis at that time of possible SLAP tear and AC joint degenerative changes.

On November 24th, 2010 the Petitioner had an EMG conducted by Dr. Philips and read by Dr. Paletta. The Petitioner was found to have left cubital syndrome as well as left wrist carpal tunnel syndrome. Additionally at that time, Dr. Paletta indicated in his note that he could do the carpal, cubital syndromes surgeries concomitant with the shoulder surgery. The doctor stated in his record that this could be done to minimize the Petitioner's recovery time. There is no mention in the record with regard to conducting the surgeries concurrently due to the Petitioner's heart condition.

At trial Petitioner testified that he had been diagnosed with carpal tunnel syndrome in 2006, while he was working at Big Muddy. At that time his treatment included wearing a splint at night. He further testified that he did not know it was work related. When asked about his prior medical treatment, Petitioner stated on cross-examination the following:

"Well, the treatment that the doctor prescribed for me in 2006, it improved greatly, and he told me at that time that all I was doing was postponing the inevitable in five to six years is what he told me at that time. He said we can't fix this problem without cutting on you." [TX 55-56] emphasis added.

Respondent called as a witness Barbara Cooksey; she is in charge of the Dietary section of Big Muddy and is Mr. Carpenter's supervisor. She testified clearly that she was notified by the Petitioner he was going to have surgery for his shoulder but was NOT notified about any problems with either carpal or cubital tunnel syndrome.

Dr. Paletta performed surgery in January 4th of 2011. Dr. Paletta was in the middle of performing Surgery to the hands and arms when the Petitioner went into cardiac arrest and the surgery had to be halted. Shoulder surgery was never performed. [TX 18, 19]. During his deposition Dr. Paletta testified he was not provided with the Medical records from Dr. Davis, the Petitioner's earlier treating physician for carpal tunnel syndrome.

Dr. Sudekum conducted an IME on Nov. 25, 2011 and his deposition was taken on December 2nd 2011. He had reviewed records provided to him and there was mention of carpal tunnel syndrome as far back as 2002. [R. Ex 1, P 35] He further went on to state the note was from the Petitioner's cardiologist and that surgery was discussed at that time and turned down by the Petitioner. Dr. Sudekum went on to opine that "his job duties at Big Muddy Correctional Center did not cause or aggravate his left carpal...cause or aggravate his left cubital tunnel syndrome..."

Respondent had the Petitioner examined by a board certified cardiologist, Dr. Stephen Schuman. The Petitioner's attorney did not have a cardiologist examine the Petitioner nor did he offer any evidence from a Cardiologist. Dr. Schuman opined that:

- a. The infarction actually occurred after minor parts of the surgery, the carpal and cubital tunnel release, done for numbness and tingling in the left fingers, NOT RELATED TO THE SHOULDER INJURY OF 3/13/10 ACCORDING TO DR. PALETTA.
- b. The procedure on the shoulder **had not begun yet**.
- c. An important prerequisite for an intraoperative MI was his underlying coronary artery disease. [R. Ex. 3] emphasis added.

With regard to his shoulder, Petitioner did not have surgery and has readjusted his life to use his right shoulder. He has weakness, loss of strength, and pain in his left shoulder.

Based on the foregoing, the Arbitrator makes the following conclusions:

1. Petitioner sustained an injury to his left shoulder as a result of the accident on March 13, 2010. Petitioner failed to prove that he sustained an accident on November 24, 2010. The evidence clearly shows that the Petitioner had been having problems with carpal tunnel for years, going back to 2006, when he was diagnosed with this condition and was advised of the possible need for surgery. Dr. Paletta's diagnosis of carpal tunnel syndrome on November 24, 2010 only confirmed what Petitioner already knew 4 years prior.
2. Based on the Arbitrator's findings regarding accident, the Arbitrator finds that there is no causal connection between Petitioner's employment and his left hand and elbow conditions. Furthermore, there is no causal connection between the Petitioner's cardiac arrest and his employment. This finding is based on the fact that the Petitioner's cardiac arrest occurred during his surgery for the carpal tunnel and cubital tunnel procedure. The Arbitrator finds Dr. Schuman's opinions persuasive in this regard.
3. As a result of Petitioner's accident from March 13, 2010, Petitioner sustained injuries to the extent of 15% loss of use of the man as a whole.
4. Based on the Arbitrator's findings regarding accident and causation with regards to Petitioner's alleged claim from November 24, 2010, all other issues for that claim are rendered moot and benefits claimed from that accident are denied.

STATE OF ILLINOIS)
) SS.
 COUNTY OF JEFFERSON)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <input type="checkbox"/> up	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JERRY CARPENTER,

Petitioner,

14IWCC0023

vs.

NO: 10 WC 42957

STATE OF ILLINOIS, BIG MUDDY RIVER
 CORRECTIONAL CENTER,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, temporary total disability, medical expenses and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner is a Dietary Correctional Food Service Supervisor II for Respondent. He has worked for Respondent since 2000.
2. On March 13, 2010, Petitioner was moving a carton of milk from one cooler to another room. The cartons were stacked on top of one another. While pulling one cart, he noticed that a stack of milk that was 6 cases high was falling. As he reached to catch it, the stack continued falling and yanked his left shoulder.
3. An MRI performed on May 3, 2010 revealed bursal surface fraying of the distal supraspinatus, infraspinatus tendons and acromioclavicular joint arthritis.

14IWC0023

4. In November of 2010, Petitioner was still having left shoulder issues. On November 17, 2010 Petitioner told Dr. Paletta that his shoulder was still weak and unstable. Cortisone shots and therapy did not help. Petitioner also complained of numbness and left shoulder pain. An Arthrogram revealed evidence of a partial thickness bursal side tear of the supraspinatus and infraspinatus. After diagnostic testing surgery was recommended on his hand, elbow and shoulder.
5. Subsequent to the November 2010 diagnostic tests, Petitioner completed a workers' compensation packet in order to have his claim on file with the State. This was completed within 45 days of receiving the diagnostic results. He also notified his supervisor that he was taking off work for surgery in January of 2011.
6. As a result of Petitioner sustaining injuries to his elbow and wrist as well (11 WC 17136), it was decided that it was in his best interests to undergo surgery in all three locations contemporaneously.
7. During the latter part of his elbow and wrist surgeries, Petitioner suffered a heart attack. Since he is considered high risk, he has yet to undergo his shoulder surgery. He has readjusted his life in order to have use of his right shoulder.
8. Dr. Paletta was present at the time of the heart attack during surgery. He opined that Petitioner's heart attack was a result of the physical stress of the surgery. The anxiety Petitioner felt prior to the surgery, along with elevated blood pressure and the potentially elevated heart rate all placed stress on his heart.
9. Respondent's physician, Dr. Schuman, also opined that the stress of the surgery was a significant factor in the acute heart attack.
10. After the surgery, Petitioner was off work until September 1, 2011. He was restricted from doing overtime work and was prohibited from lifting over 25 pounds. Currently, he is full duty with no restrictions.
11. Subsequent to the heart attack, Petitioner now notices he has less endurance. He does not ride motorcycles as often as he once did, no longer golfs or attends cookouts, and needs much more sleep than he used to. He also takes ambien to help fall asleep nightly due to his ongoing shoulder issues.
12. Dr. Paletta last saw Petitioner on March 4, 2011. At that time, his heart condition still prohibited his necessary shoulder surgery, however.
13. Barbara Cooksey, Respondent's Public Service Administrator, is also Petitioner's Supervisor. She corroborated Petitioner's testimony, stating that he called and notified her of the date of his January 2011 surgery, and told her that he was going to be off of work due to the workers' compensation claim he had.

14IWCC0023

The Commission affirms the Arbitrator's finding that Petitioner's shoulder injury arose out of and was in the course of his employment.

The Commission, however, modifies the Arbitrator's ruling regarding causal connection to the heart attack suffered by Petitioner during surgery. The Commission views the evidence slightly different; pointing out that both Petitioner's physician (Dr. Paletta) and Respondent's physician (Dr. Schuman) opined that the heart attack was significantly caused by the stress of surgery. Thus, since Petitioner incurred his heart attack in the midst of surgeries including the one to be done on his shoulder, Petitioner's heart attack was secondary to his work related shoulder condition. Furthermore, since Petitioner would have undergone shoulder surgery regardless of his elbow and wrist issues, it follows that the stress of the shoulder surgery significantly contributed to his heart attack.

As a result of this modification, the Commission also remands this case to the Arbitrator for a determination on permanent partial disability.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's heart attack was secondary to his work-related shoulder injury.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for a determination on permanent partial disability.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

DATED:
O: 11/20/13
DLG/wde
45

JAN 17 2014


David L. Gore

 
Mario Basurto


Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CARPENTER, JERRY

Employee/Petitioner

Case# 10WC042957

11WC017136

SOI/BIG MUDDY RIVER CORRECTIONAL
CENTER

Employer/Respondent

14IWCC0023

On 11/2/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.16% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
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1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

NOV 2 2012



[Signature]
KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF Williamson)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)(18)) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

14IWCC0023

Jerry Carpenter

Employee/Petitioner

v.

State of Illinois/Big Muddy River Correctional Center

Employer/Respondent

Case # **10 WC 42957**

Consolidated cases: **11 WC 17136**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Herrin**, on **8/16/12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent (for the accident date of 11/24/10)?
- D. ☒ What was the date of the accident (for the accident date of 11/24/10)?
- E. ☒ Was timely notice of the accident given to Respondent (for the accident date of 11/24/10)?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services? (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)
- K. ☒ What temporary benefits are in dispute? (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)
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- L. ☒ What is the nature and extent of the injury? (for the accident date of 11/24/10 and the cardiac condition for the accident date of 3/13/10)
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other ____

FINDINGS

14IWCC0023

On 3/13/10 & 11/24/10, Respondent *was* operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship *did* exist between Petitioner and Respondent.

On 3/13/10, Petitioner *did* sustain an accident that arose out of and in the course of employment. Petitioner did not sustain an accident on 11/24/10.

Timely notice of the 3/13/10 accident *was* given to Respondent.

Petitioner's current condition of ill-being *is in part* causally related to the accidents.

In the year preceding the injury, Petitioner earned \$67,248.00; the average weekly wage was \$1,293.23.

On the date of accident, Petitioner was 58 years of age, *married* with 0 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$0.

Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of \$664.72/week for 75 weeks, because the injuries sustained caused the 15% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay reasonable and necessary medical services limited to treatment for Petitioner's left shoulder condition, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act. If Petitioner's health carrier should request reimbursement, Respondent shall indemnify and hold Petitioner harmless.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator

10/29/12
Date

Findings of Fact

Petitioner is a 58 year old Food Service Supervisor II at the Big Muddy Correctional Center, a position he has held since 2000. Prior to this he was employed as a correctional officer at Menard Correctional Center. He is alleging two accidents. The first claim stems from an incident on March 13, 2010 involving a singular trauma to Petitioner's left shoulder under case number 10 WC 42957. Petitioner's second claim is from an alleged accident date of November 24, 2010, involving repetitive trauma to Petitioner's left hand, arm and elbow under case number 11 WC 17136. Respondent is only disputing the first claim on the issue of whether Petitioner's cardiac condition is causally connected to that accident. Respondent is disputing the second claim on the issues of accident, notice, causation, medical expenses and TTD.

On March 13, 2010 the Petitioner was moving a carton of milk and suffered an injury to his left shoulder. At no point was injury to the Petitioner's arms or elbows, i.e. carpal and cubital tunnel syndrome mentioned or included in a form 45, report of injury to the Petitioner's employer. This claim was approved by Petitioner's employer and the Petitioner began a regiment of treatment with a local surgeon Dr. Dennon Davis lasting from March thru May of 2010. [PX 3]. He then began treatment with Dr. Paletta on November 18th 2010, after being sent there by his attorney, [TX 56] and the record reflects numbness and tingling in the hands and the note also mentions a carpal tunnel diagnosis of 6-7 years prior. [PX 6] Additionally he was given a diagnosis at that time of possible SLAP tear and AC joint degenerative changes.

On November 24th, 2010 the Petitioner had an EMG conducted by Dr. Philips and read by Dr. Paletta. The Petitioner was found to have left cubital syndrome as well as left wrist carpal tunnel syndrome. Additionally at that time, Dr. Paletta indicated in his note that he could do the carpal, cubital syndromes surgeries concomitant with the shoulder surgery. The doctor stated in his record that this could be done to minimize the Petitioner's recovery time. There is no mention in the record with regard to conducting the surgeries concurrently due to the Petitioner's heart condition.

At trial Petitioner testified that he had been diagnosed with carpal tunnel syndrome in 2006, while he was working at Big Muddy. At that time his treatment included wearing a splint at night. He further testified that he did not know it was work related. When asked about his prior medical treatment, Petitioner stated on cross-examination the following:

"Well, the treatment that the doctor prescribed for me in 2006, it improved greatly, and he told me at that time that all I was doing was postponing the inevitable in five to six years is what he told me at that time. He said we can't fix this problem without cutting on you." [TX 55-56] emphasis added.

Respondent called as a witness Barbara Cooksey; she is in charge of the Dietary section of Big Muddy and is Mr. Carpenter's supervisor. She testified clearly that she was notified by the Petitioner he was going to have surgery for his shoulder but was NOT notified about any problems with either carpal or cubital tunnel syndrome.

Dr. Paletta performed surgery in January 4th of 2011. Dr. Paletta was in the middle of performing Surgery to the hands and arms when the Petitioner went into cardiac arrest and the surgery had to be halted. Shoulder surgery was never performed. [TX 18, 19]. During his deposition Dr. Paletta testified he was not provided with the Medical records from Dr. Davis, the Petitioner's earlier treating physician for carpal tunnel syndrome.

14IWCC0023

Dr. Sudekum conducted an IME on Nov. 25, 2011 and his deposition was taken on December 2nd 2011. He had reviewed records provided to him and there was mention of carpal tunnel syndrome as far back as 2002. [R. Ex 1, P 35] He further went on to state the note was from the Petitioner's cardiologist and that surgery was discussed at that time and turned down by the Petitioner. Dr. Sudekum went on to opine that "his job duties at Big Muddy Correctional Center did not cause or aggravate his left carpal...cause or aggravate his left cubital tunnel syndrome..."

Respondent had the Petitioner examined by a board certified cardiologist, Dr. Stephen Schuman. The Petitioner's attorney did not have a cardiologist examine the Petitioner nor did he offer any evidence from a Cardiologist. Dr. Schuman opined that:

- a. The infarction actually occurred after minor parts of the surgery, the carpal and cubital tunnel release, done for numbness and tingling in the left fingers, NOT RELATED TO THE SHOULDER INJURY OF 3/13/10 ACCORDING TO DR. PALETTA.
- b. The procedure on the shoulder **had not begun yet**.
- c. An important prerequisite for an intraoperative MI was his underlying coronary artery disease. [R. Ex. 3] emphasis added.

With regard to his shoulder, Petitioner did not have surgery and has readjusted his life to use his right shoulder. He has weakness, loss of strength, and pain in his left shoulder.

Based on the foregoing, the Arbitrator makes the following conclusions:

1. Petitioner sustained an injury to his left shoulder as a result of the accident on March 13, 2010. Petitioner failed to prove that he sustained an accident on November 24, 2010. The evidence clearly shows that the Petitioner had been having problems with carpal tunnel for years, going back to 2006, when he was diagnosed with this condition and was advised of the possible need for surgery. Dr. Paletta's diagnosis of carpal tunnel syndrome on November 24, 2010 only confirmed what Petitioner already knew 4 years prior.
2. Based on the Arbitrator's findings regarding accident, the Arbitrator finds that there is no causal connection between Petitioner's employment and his left hand and elbow conditions. Furthermore, there is no causal connection between the Petitioner's cardiac arrest and his employment. This finding is based on the fact that the Petitioner's cardiac arrest occurred during his surgery for the carpal tunnel and cubital tunnel procedure. The Arbitrator finds Dr. Schuman's opinions persuasive in this regard.
3. As a result of Petitioner's accident from March 13, 2010, Petitioner sustained injuries to the extent of 15% loss of use of the man as a whole.
4. Based on the Arbitrator's findings regarding accident and causation with regards to Petitioner's alleged claim from November 24, 2010, all other issues for that claim are rendered moot and benefits claimed from that accident are denied.

STATE OF ILLINOIS)
) SS.
 COUNTY OF PEORIA)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Bradley D. Crabtree,

Petitioner,

vs.

NO: 10 WC 34685

Pella Corporation,

Respondent.

14IWCC0024

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 16, 2012 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **JAN 17 2014**

DLG/gal
 O: 11/20/13
 45


 David L. Gore


 Michael J. Brennan


 Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CRABTREE, BRADLEY D

Employee/Petitioner

Case# 10WC034685

08WC020479

14 I W C C 0 0 2 4

PELLA CORPORATION

Employer/Respondent

On 8/16/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.14% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0834 KANOSKI & ASSOCIATES
CHARLES EDMISTON
129 S CONGRESS
RUSHVILLE, IL 62681

0264 HEYL ROYSTER VOELKER & ALLEN
CRAIG S YOUNG
124 S W ADAMS ST SUITE 600
PEORIA, IL 61602

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION **14IWCC0024**

BRADLEY D. CRABTREE,

Employee/Petitioner

Case # 10 WC 34685

v.

Consolidated cases: 08 WC 20479

PELLA CORPORATION,

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **7/19/12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On 10/23/07, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$24,846.06; the average weekly wage was \$517.63.

On the date of accident, Petitioner was 37 years of age, *single* with 1 dependent child.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$00.00 for TTD, \$00.00 for TPD, \$00.00 for maintenance, and \$00.00 for other benefits, for a total credit of \$00.00.

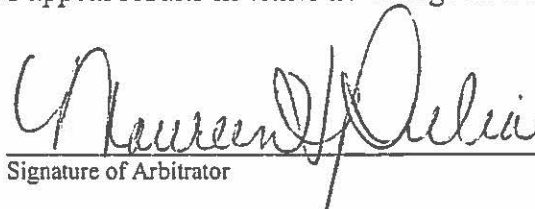
Respondent is entitled to a credit of \$00.00 under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner no permanent partial disability benefits because the injuries sustained caused petitioner no permanent partial disability as provided in the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

8/14/12
Date

AUG 16 2012

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 37 year old packout laborer, alleges he sustained an accidental injury that arose out of and in the course of his employment by respondent on 10/22/07. On that day petitioner was lifting a window from the line and felt a sharp pain in his chest. He testified that he dropped the window and immediately went to the nurses' station after telling his fellow workers what happened.

Petitioner testified that he was sent to the emergency room by the nurse because they thought it might be related to his heart based on his symptoms. The medical records from the Emergency Department at McDonough District Hospital reflect that petitioner presented on 10/23/07 at 8:38 am with chest pain for three days. He gave a history of pain in the middle substernal area on Sunday that was improving. He also reported that he did not notice it much at work the day before. However, on 10/23/08 it bothered him a little. He gave a history of lifting windows weighing approximately 100 pounds intermittently. He indicated that this is what recreated the pain. He described it as sharp on his left side without radiation. He stated that he saw a nurse prior to coming to the emergency room and she was the one that recommended an evaluation to make sure he did not have a heart problem. Petitioner reported some heart damage due to chemotherapy following a bone cancer diagnosis 17 years ago. He also reported that he had an ultrasound a year later that demonstrated that the heart wall motion and ejection fraction were within normal limits.

The "monitor questionnaire" completed by Nurse Bartlett Lynn included a history of petitioner having sharp upper left sided chest pain that started that morning at 7:30 am. Following an examination, labs and chest x-ray that did not demonstrate any infiltrate or effusion, he was assessed with chest pain, likely secondary to musculoskeletal issues. He was given two days off with no heavy lifting. He was discharged on an as needed basis.

On 10/23/07 petitioner presented to Dr. O'Neill after leaving the emergency room. Dr. O'Neill examined petitioner and assessed a fairly controlled hypertension, and noted that petitioner had been off his meds for 7-10 days. He also assessed a possible sleep apnea. He advised petitioner to stop smoking and gave him directives for his unrelated problems.

On 10/27/08 petitioner followed-up with Dr. O'Neill for his preexisting left arm condition that is unrelated to this alleged accident. He complained of continued pain in the left upper chest muscles. He stated that he strained his chest lifting 100 pound windows for Pella. He reported that he went to the emergency room because of left chest pain that was found to be a muscle strain. He reported that it was slowly getting better, but lifted up a child weighing 27 pounds over the weekend and was now having

significant pain again. Dr. O'Neill examined petitioner and assessed a muscle strain. He said it would take a couple weeks to heal. He placed petitioner on light duty for 3 weeks and prescribed Skelaxin and Celebrex, and gentle stretching. Petitioner was instructed to follow-up in a week, but showed up late and was not seen. He had a follow up appointment scheduled for 11/6/07, but did not show. Petitioner has had no further treatment for his muscle strain.

On 11/10/11 petitioner underwent a Section 12 examination performed by Dr. Hauter, at the request of the respondent. Petitioner stated that on 10/22/07 he felt some pain in the anterior chest and left upper arm when he ran a machine for putting cardboard around double hung windows, and he stretched to pick up a window and felt the pain gradually increase. He stated that the pain resolved in two weeks.

Petitioner testified that he gets occasional muscle cramps in the left chest area, maybe once or twice a week. He testified that the cramps last about 5 minutes and when they go away he has an uncomfortable feeling.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

Petitioner claims that on 10/22/07 while lifting a 100 pound window for respondent he felt a sharp pain in his chest wall. Petitioner presented to the company nurse who sent him to the emergency room. At the emergency room the first accident history was completed by Nurse Bartlett Lynn. This history indicated that petitioner was having sharp upper left sided chest pain that started that morning at 7:30 am.

The emergency room report of Dr. Mario contained a slightly different history. Dr. Mario noted that petitioner presented on 10/23/07 at 8:38 am with chest pain for three days. He gave a history of pain in the middle substernal area on Sunday that was improving. He also reported that he did not notice it much at work the day before. However, on 10/23/08 it bothered him a little. He gave a history of lifting windows weighing approximately 100 pounds intermittently. He indicated that this is what recreated the pain. He described it as sharp on his left side without radiation. He stated that he saw a nurse prior to coming to the emergency room and she was the one that recommended an evaluation to make sure he did not have a heart problem.

Based on the above, as well as the credible record, the arbitrator finds the petitioner did in fact sustain a muscle pull while lifting windows at work, and reported it to the nurse, before being sent to the emergency room for treatment. The arbitrator sua sponte changes the date of accident from 10/22/07 to

10/23/07 to conform to the credible evidence. Both histories include a statement that petitioner was sent to the emergency room by respondent's nurse after lifting windows at work.

The arbitrator finds the petitioner sustained an accidental injury that arose out of and in the course of his employment by respondent on 10/23/07.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issue of accident and incorporates them herein by this reference.

As a result of the accident on 10/23/07 petitioner was diagnosed with a muscle strain. He followed-up with Dr. O'Neill that same day for his preexisting left arm condition that is unrelated to this alleged accident. He also complained of continued pain in the left upper chest muscles. He stated that he strained his chest lifting 100 pound windows for Pella. He reported that he went to the emergency room because of left chest pain that was found to be a muscle strain. He reported that it was slowly getting better, but lifted up a child weighing 27 pounds over the weekend and was now having significant pain again. Dr. O'Neill examined petitioner and assessed a muscle strain. He said it would take a couple weeks to heal. He placed petitioner on light duty for 3 weeks and prescribed Skelaxin and Celebrex, and gentle stretching. Petitioner was instructed to follow-up in a week, but showed up late and was not seen. He had a follow up appointment scheduled for 11/6/07, but did not show. Petitioner has had no further treatment for his muscle strain.

Petitioner told Dr. Hauter on 11/10/11 that his pain resolved in two weeks after 10/22/07. Petitioner has subjective complaints of occasional muscle cramps in the area that last 5 minutes, and feels uncomfortable afterwards. Petitioner has not seen any doctor for these complaints.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner's current condition of ill-being is not causally related to the accident he sustained on 10/23/07. At most, the arbitrator finds the petitioner sustained a muscle strain that had resolved by 11/6/07.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issues of accident and causal connection and incorporates them herein by this reference.

Petitioner was diagnosed with a muscle strain as a result of the accident on 10/23/07. Petitioner had two follow-up visits with Dr. O'Neill on 10/23/07 and 10/28/07. Thereafter petitioner never followed-up with Dr. O'Neill for this condition. Petitioner has subjective complaints of occasional

14IWCC0024

muscle cramps in the area that last 5 minutes, and feels uncomfortable afterwards. Petitioner has not seen any doctor for these complaints. He also told Dr. Hauter that his pain had resolved two weeks after the injury.

Based on the above, the arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that he sustained any permanent partial disability as a result of the accident on 10/23/07.

STATE OF ILLINOIS)
) SS.
 COUNTY OF PEORIA)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input checked="" type="checkbox"/> Reverse accident	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

BRADLEY CRABTREE,

Petitioner,

14IWCC0025

vs.

NO: 08 WC 20479

PELLA CORPORATION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causal connection, medical expenses, prospective medical care and temporary total disability, and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below.

Findings of fact and conclusions of law

The Commission finds:

1. Petitioner's job title with Respondent was Pack Out. He was hired by Respondent in March of 2006. He worked there for approximately 2 years. His duties included inspecting manufactured windows for defects and placing wooden slats on them for depth if need be. He also put weather stripping on the outside of the window, wrapped it in cardboard to prevent scratches and wrapped that in plastic to be shipped. The windows were moved from station to station on rollers. The windows had to be lifted a little to be placed on the rollers at each station. If a defect was found, Petitioner would lift the window entirely off of the assembly line and carry it 10-12 feet away to another station for repair. Windows weighed from 25 to 150 pounds. The majority of them weighed 75 pounds and were 3 feet by 5 feet. He would lift 40 windows per 8 hour shift for repair. In total he would work on 100-200 windows per shift.
2. On November 6, 2007 Petitioner worked, went home, showered, had dinner and watched television before going to bed. The following morning he woke up but was unable to move due to back pain. He called off work, and told Respondent he was having back problems. An agent of Respondent told him to keep in touch.

14IWC0025

3. Petitioner initially treated with Dr. Osborn, a chiropractor. On November 8, 2007 he presented with complaints of low back pain in the L3-5 region. Dr. Osborn noted normal range of motion in all ranges with mild pain on flexion and extension. Motor, sensory and reflexes were all normal.
4. Petitioner then treated with his family doctor, Dr. Arnold, who took him off work. On November 19, 2007 Petitioner indicated that he had experienced pain in his low back and left leg since November 7, 2007. A lumbar x-ray revealed no acute abnormality, some transitional lumbosacral segment and tiny calcifications over the region of the right kidney.
5. Petitioner kept in touch with Respondent's nurse and HR department while off work. On November 27, 2007, after 3-4 weeks of therapy, Petitioner was sent back to work full duty, despite telling Dr. Arnold that he was not ready. 2 hours into his first shift, he was unable to lift anything, and thus could not do his job.
6. A DVD depicting Petitioner's job duties revealed little repetitive activity, including the lifting of windows.
7. Petitioner initially told Respondent that the injury in question was not work related because he assumed it was just a pinched nerve that would subside. Instead of completing workers' compensation paperwork, he elected to complete paperwork for short term disability on December 31, 2007. He did not report the November 2007 injury as a work-related injury until after conservative care was unsuccessful.
8. Petitioner was referred to Dr. Schierer, an orthopedic doctor, who performed a lumbar MRI and epidural injection. Petitioner requested a less physically demanding job from Respondent in January 2008, but was denied. He never returned to work for Respondent.
9. In late January 2008 Petitioner began working for NTN Bower in a less physically demanding role. He worked in the grinding department, which required him to place bearings onto a machine, push a button, and have the bearings shaved down. The most he lifted was 25 pounds. Petitioner continued treating with Dr. Schierer, and underwent another epidural injection in March of 2009. This is all the treatment he had for his low back.
10. During an Independent Medical Examination (IME) with Dr. Hauter on November 10, 2011, Petitioner specifically denied any work-related accident in November 2007. He stated that he simply slept wrong one night and woke up in pain.
11. Prior to the accident in question, on August 23, 2006, Petitioner complained of low back pain after moving furniture around to vacuum 2 days prior. Petitioner stated that he woke up on this date with intense back pain and was diagnosed with a muscle spasm and lumbar sacral strain. Petitioner treated for this injury until 9/21/06.

14IWCC0025

Based on the medical records in evidence, the Commission reverses the Arbitrator's rulings on the issue of accident. Although Petitioner offered testimony regarding the repetitive lifting he performed while working for Respondent, his statements and actions in evidence contradict any inference that his work duties caused his back injury.

Prior to the accident in question, Petitioner complained of low back pain on August 23, 2006 after moving furniture around to vacuum 2 days prior. Additionally, Petitioner failed to categorize the alleged accident as work-related, opting instead to file for disability benefits. Finally, Petitioner's own words during an IME with Dr. Hauter refute his own claim. During said IME, Petitioner specifically denied any work-related accident in November 2007. He stated that he simply slept wrong one night and woke up in pain.

Accordingly, since Petitioner is unable to sufficiently prove that a work-related accident occurred in November of 2007, the Commission reverses the Arbitrator's ruling and finds that Petitioner failed to prove he incurred a work-related accident.

With a finding of no accident, the remaining issues of causal connection, medical expenses, prospective medical care, temporary total disability and permanent partial disability are moot, and thus vacated.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner failed to prove he sustained an accident arising out of and in the course of his employment with Respondent on November 7, 2007.

IT IS FURTHER ORDERED BY THE COMMISSION that no medical expenses, prospective medical care, temporary total disability benefits or permanent partial disability benefits be awarded to Petitioner.

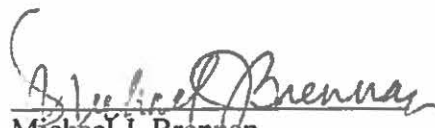
Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$5,100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
O: 11/20/13
DLG/wde
45

JAN 17 2014


David L. Gore


Mario Basurto


Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CRABTREE, BRADLEY D

Employee/Petitioner

Case# 08WC020479

10WC034685
141WCC0025

PELLA CORPORATION

Employer/Respondent

On 8/16/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.14% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0834 KANOSKI & ASSOCIATES
CHARLES EDMISTON
129 S CONGRESS
RUSHVILLE, IL 62681

0264 HEYL ROYSTER VOELKER & ALLEN
CRAIG S YOUNG
124 S W ADAMS ST SUITE 600
PEORIA, IL 61602

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

14IWCC0025

BRADLEY D. CRABTREE,

Employee/Petitioner

v.

PELLA CORPORATION,

Employer/Respondent

Case # 08 WC 20479

Consolidated cases: 10 WC 34685

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **7/19/12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On 11/7/07, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$24,846.06; the average weekly wage was \$517.63.

On the date of accident, Petitioner was 37 years of age, *single* with 1 dependent child.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$00.00 for TTD, \$00.00 for TPD, \$00.00 for maintenance, and \$00.00 for other benefits, for a total credit of \$00.00.

Respondent is entitled to a credit of \$00.00 under Section 8(j) of the Act.

ORDER

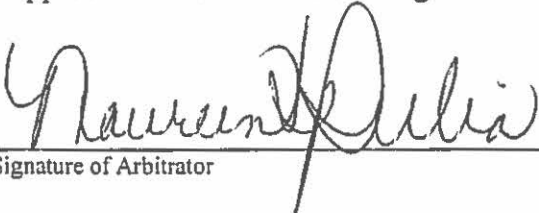
Respondent shall pay Petitioner temporary total disability benefits of \$345.09/week for 9-1/7 weeks, commencing 11/17/07-12/11/07 and 12/17/07-1/24/08, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services as outlined in Section J of this decision, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner no permanent partial disability benefits because the injuries sustained caused petitioner no permanent partial disability as provided in the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

8/14/12
Date

AUG 16 2012

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 37 year old packout laborer, alleges he sustained an accidental injury due to repetitive work activities that arose out of and in the course of his employment by respondent and manifested itself on 11/6/07. Petitioner has worked for respondent for about two years.

Petitioner testified that he would receive a window after it had been put together and would put extensions on it. He would then make sure the window had no defects. Petitioner would then put on the weather stripping, and cardboard around the window to prevent scratches. Lastly plastic wrapper would be put around the window and it would be shipped. Petitioner testified that the windows were on rollers and may have to be lifted and taken off the line if something was wrong and taken to another station for repair.

Petitioner testified that he had to lift windows all day long. He testified that if he got behind he had to pull windows off the line in order to keep the line moving. Petitioner testified that the windows he lifted weighed from 25-150 pounds each. On average the windows weighed about 75 pounds each. In any given day petitioner lifted about 40 windows.

Petitioner testified that on 11/6/07 he finished working his shift and went home. He took a shower, made dinner, watched television and went to bed. When he woke up the next day he could not move due to the pain in his back. Petitioner called respondent that morning and reported that he would not be in that day because there was something wrong with his back. Petitioner testified that he did notice anything the day before other than aches in his shoulders from lifting windows.

On 11/8/07 petitioner presented to Dr. Daren Osborn, D.C. with complaints of low back pain in the L3-L5 region with radicular signs/symptoms into the lower left extremity. He reported the date of onset as 11/6/07 and insidious. Petitioner reported that his work for Pella and at the foundry "has been real hard on his back" with heavy lifting over the years. Petitioner reported that he had seen Dr. O'Neill for this condition and was told that he had "collapsed vertebrae in his back" at L4-L5. He stated that Dr. O'Neill gave him prescription medication. Dr. Osborn examined petitioner and noted normal range of motion in all ranges with mild pain on flexion and extension; lower extremity motor and sensory, and reflexes were within normal limits; normal heel and toe walk; mild to moderate lumbar myospasms at L3-L5 bilaterally, and mild to moderate left gluteal spasms. Dr. Osborn told petitioner that he could not treat him with chiropractic treatment if he has a collapsed vertebrae. He performed therapy. On 11/12/07 petitioner reported that his pain was slightly better, but still there. He reported new pain between his shoulder blades. Dr. Osborn did chiropractic treatment in this area and therapy on the low back.

On 11/15/07 petitioner presented to Dr. Arnold. Petitioner gave a history of having back pain with left sided sciatica intermittently for the last couple of weeks. He stated that he had been to a chiropractor on several occasions. This Tuesday he went to work and had a lot of trouble. Wednesday he worked too, but was really getting bad and Thursday and today he just could not really do anything due to back spasms. He reported occasional tingling in his left foot, that was worse yesterday than today. He reported back problems in the past, but not this bad. Following an examination Dr. Arnold diagnosed low back strain with left sided sciatica. Dr. Arnold referred petitioner for a course of physical therapy and changed his medications. He continued petitioner off work.

On 11/19/07 petitioner presented to Advanced Rehab and Sports Medicine Services for pain in his lower back and left leg. He identified the date of injury as 11/7/07. Petitioner gave a history of waking up on Wednesday morning (11/7/07) and could hardly walk. An x-ray of the lumbar spine revealed no acute appearing abnormality; transitional lumbosacral segment; and tiny calcifications over the region of the right kidney. On 12/10/07 petitioner still had tenderness at L3-L1. Also noted was a light left foot drop from a previous back surgery. Petitioner was making good progress and was able to lift 20 pounds.

On 11/26/07 and 12/31/07 petitioner completed a Disability Application Form. The nature of his disability was identified as pain in the back. He stated that he last worked 11/6/07 and 11/14/07 on the form dated 11/26/07, and 12/11/07 on the form dated 12/31/07.

Petitioner was released to light duty work and continued in physical therapy. Petitioner never returned. Petitioner was discharged on 1/15/08 because he had not shown up since 12/10/07.

On 11/27/07 petitioner followed-up with Dr. Arnold and stated that he was doing better, but was still not ready to return to work. Dr. Arnold was of the opinion that physical therapy did not think he was ready to return to work and neither did he. On 12/10/07 Dr. Arnold released petitioner to light duty work on 12/11/07 with restrictions on lifting more than 20 pounds. He also indicated that petitioner could return to full duty as of 12/17/07. He reiterated this full duty release to work on 12/5/07. Dr. Arnold was of the opinion that petitioner walks with a limp at times due to a history of bone cancer and radiation to his leg, and that this can really throw off the hip, knee and back.

On 12/12/07 petitioner called Dr. Arnold and reported that he had worked for three hours and had back spasms and increased pain. Petitioner was referred to Dr. Schierer, an orthopedic specialist. Petitioner had a follow-up appointment scheduled for 1/10/08 which was rescheduled for 1/14/08, but did not show.

On 12/17/07 petitioner presented to Dr. Schierer. Petitioner complained of low back pain on the left side into his left buttock. He reported that he was told last year that he had a couple of collapsed vertebrae, but never had an MRI done. He stated that he has had his complaints for 1 month. He stated that he woke up for work one morning and could hardly stand. Petitioner gave a history of osteogenic sarcoma in 1990 and left foot drop and numbness of the left foot following surgery on his left lower extremity. Petitioner reported that he does a lot of heavy lifting on the job. He reported increased pain with Valsalva. He described his pain as constant, moderate to severe, worse with activity and relieved somewhat with rest. Dr. Schierer had petitioner undergo an x-ray of the lumbosacral spine that was within normal limits. Dr. Schierer assessed a possible herniated disc lumbosacral spine. He ordered an MRI of the lumbar spine and authorized petitioner off work.

On 12/27/07 petitioner returned to Dr. Schierer and reported that his back and leg pain were continuing to bother him. Dr. Schierer reviewed the MRI scan and was of the opinion that it showed a degenerative bulging disc with an annulus fibrosis tear and facet joint arthropathy at L5-S1. He recommended epidural steroid injections. He continued petitioner off work.

On 1/4/08 petitioner underwent another epidural steroid back injection. Petitioner was scheduled to follow-up with Dr. Schierer on 1/23/08 but was a no show.

Petitioner testified that in early 2008 he had talked with respondent about returning to work in a less physical job, but his request was denied. Petitioner testified that he went to work for NTN Bower in the grinding department. His job was putting bearings on a machine and pushing buttons. Petitioner testified that he lifted about 25 pounds performing this job.

On 7/7/08 petitioner underwent an epidural steroid injection. He reported improvement of his back pain. He was instructed to increase his activities. On 3/20/09 petitioner underwent a repeat injection.

On 10/27/10 Dr. Schierer drafted a medical report opining that petitioner's condition was either caused, aggravated, or accelerated by the heavy lifting that the petitioner did at his job for respondent. He opined that his job at least partially caused and certainly aggravated his condition. This was drafted at the request of petitioner's attorney.

On 11/10/11 petitioner underwent a Section 12 examination by Dr. Hauter at the request of the respondent. Petitioner stated that while sleeping at home he awoke with pain in his back. He denied an injury at work. He stated that he felt that he had just slept wrong. Petitioner told Dr. Hauter that after being returned to work he was unable to perform the job due to continued pain. He again denied an

injury or re-injury at work. Dr. Hauter noted no disc herniation or nerve root impingement on the lumbar spine MRI. He also noted that there was no evidence of any vertebral compression on the MRI or x-rays of the lumbar spine.

Petitioner told Dr. Hauter that due to his back pain with certain movements he decided to change jobs. He stated he now works a job that requires less lifting and gets along very well. He reported occasional pain that comes and goes, but overall he has no impairment. He stated that he is able to perform all activities except swimming. He reported that he was working without restrictions. He stated that he has occasional pain in the lower back that is increased with prolonged sitting. Petitioner told Dr. Hauter that he was not treating for his back and was at baseline.

Dr. Hauter noted a past medical history of osteogenic sarcoma of the left leg in 1990 for which he has had several surgeries and undergone chemotherapy at age 19. He also developed a drop foot of the left leg after surgery and chemotherapy, for which he used a brace in the past. He also reported chronic back pain. He reported a history of awakening with pain on 8/23/06 after moving furniture. He stated that pain recurs with certain positioning. He gave a history of anxiety that is controlled with medication. Following an examination, Dr. Hauter's impression was chronic back pain that has been present on and off since 2006 when he had an injury at home. Petitioner gave a history of awakening with pain since that injury as documented in the medical records of 8/23/06. Dr. Hauter was of the opinion that the onset of pain on 11/14/07 (sic) was similar to the onset of pain in the past.

Dr. Hauter was unable to relate petitioner's back pain to any injury at work. He was also of the opinion that he could find no evidence of aggravation caused by the type of work reviewed from Pella Corporation. Dr. Hauter also diagnosed degenerative disc disease of the lumbar spine that has been long standing. He noted that the MRI did not demonstrate any structural cause or demonstrate any acute findings. He saw no evidence of any nerve root syndrome. He opined that petitioner's back condition is not related to the injury at work and there was no evidence of aggravation.

Dr. Hauter opined that there is no evidence of a work related injury to cause the onset of back pain as described. He further opined that petitioner's chronic pain is not a medical problem caused by repetitive work, and his back pain is not a work related problem but a chronic condition.

Dr. Hauter also was of the opinion that petitioner had post operative neuropathy in the left leg that led to a foot drop and an altered gait since the age of 19. He was of the opinion that this is the most likely cause the degeneration of the lumbar spine and chronic back pain.

Prior to the alleged accident on 11/6/07 petitioner was examined by Dr. McEntyre on 1/23/06 complaining of mid to upper back pain after heavy lifting yesterday. He denied any prior problems with his back. Petitioner was examined and assessed with musculoskeletal back pain. Petitioner was prescribed Toradol and Flexeril. A lumbar x-ray performed 8/28/06 revealed transitional lumbar segment, no acute appearing abnormality and tiny calcifications over the region of the right kidney.

On 8/23/06 petitioner presented to Dr. Reeves at Family Practice Associates with a history that he woke up that morning with intense low back pain and difficulty moving. He denied a history of back problems. He reported that he was vacuuming and moving furniture around and did not notice any symptoms at that time. He stated that the pain was not radiating to his legs, and he had no numbness or tingling. He stated that he works at Pella and lifts windows all day after they have been packaged and he usually has no problems with his back. He was examined and assessed with a muscle spasm and low back lumbar sacral strain. Petitioner was given medication and taken off work for three days. By 9/1/06 petitioner stated that he was 90-95% better. The doctor noted that he reviewed an x-ray of petitioner and noted that it did show that he had a fairly significant injury back in 1999. However, petitioner did not recall any injury. Petitioner last followed-up for this injury 9/21/06.

Petitioner testified that currently he cannot do any heavy lifting. He also testified that if he sits for too long a period his leg falls asleep. He testified that if he stands too long his back hurts. Petitioner no longer plays golf or softball due to his back pain. He also testified that when he lifts heavy things he gets pain down his left leg. Petitioner has not sought any treatment for these complaints.

Respondent offered into evidence a video of the Pella production line. The petitioner testified that the video showed all the work being done at the same station, but he did the work at different stations. Petitioner testified that there were 2 people on one station and only one on the other two stations. Because the one person stations may get behind those individuals working those stations may have to pull windows from the line in order to keep it moving. The window would be pulled from a rack 1 ½ feet off the ground, put upright and then he would carry it to another area. Petitioner testified that he never had a day where they did not get behind. Petitioner identified the three stations as extension, cardboard and wrapping.

Petitioner testified that he worked from 7:00 am – 3:00 pm per day and handled between 100-200 windows a day. Petitioner testified that the cardboard was put on at the 2nd station. Petitioner testified that when they were not running behind, the only place petitioner would physically lift the window would be at the end of the line. The rest of the time the windows were on roller and he would lift the corner to

get it to the next set of rollers. Petitioner testified that 5 of the 8 hours he worked he would have to take windows off the line. On his best day he would have to take off 5-10 windows. On his worst day he would have to remove 25-30 windows from the line. The most windows petitioner ever removed from the line in one day was 40-50 windows. Petitioner testified that he would work each station each day. Change in jobs usually occurred at break time.

With regards to defective windows, petitioner testified that on average he would process about 30 of them a day. He testified that he would remove defective window from the staging area and then put it back on the rollers after the defect was corrected. On an average day he would remove and replace about 30 windows from the line.

Petitioner testified that he thought the pain he had on 11/6/07 was a pinched nerve that would resolve if he could go to the chiropractor and undergo some physical therapy. He did not want to report a work injury because his pains had always resolved in the past. Petitioner did not want to claim it as a work injury because he did not want it to come back on the company, and did not want to abuse the system. When his complaints did not improve petitioner decided that he would report a work injury, but since it was after 45 days following the accident, he claims he was told by respondent that he could not file a workers' compensation claim. That is when petitioner decided to claim non-occupational benefits.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

Petitioner is alleging an accidental injury due to repetitive work activities that manifested itself on 11/6/07. Petitioner testified that he handled anywhere from 100-200 windows a day. Petitioner worked three stations every day. These stations included a station where extensions were put on, one where the cardboard is put on, and another where the wrapping was put on and then sent to shipping. In the course of a day if the line was running without any problems the windows were normally on rollers, moved from station to station, and were only handled and lifted by hand at the end of the day.

Petitioner presented un rebutted testimony that this was not the normal course of operation. Petitioner testified that he was required to work all three stations a day. He testified that 100-200 windows were processed a day. These windows weighed between 25-100 pounds, and were on average 75 pounds each.

On a normal day petitioner testified that they would get behind because one station had two people on it and the others only had one. When this would occur petitioner would have to manually lift the window and remove it from the line, and then lift and replace it to the line when they were caught up. On the best day he

may have to remove and replace 5-10 windows, and on the worse day he would have to take off and replace 25-30 windows to the line.

In addition to removing windows from the line due to a back up, petitioner would also have to remove defective windows. On average petitioner would handle 30 defective windows a day. After removing them he would replace them to the line once they were repaired. If petitioner was working the wrapping station, he would remove the window from the line after it was wrapped so that it could be shipped.

Petitioner testified that after doing this job for two years he woke up on 11/7/07 and could not move due to his back pain. Petitioner did not attribute this pain to a specific injury, but claimed that it was due to the repetitive lifting of the windows over the past two years.

Based on the above, as well as the credible evidence the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that he sustained a repetitive injury to his back that arose out of and in the course of his employment by respondent and manifested itself on 11/7/07. The arbitrator, sua sponte changes the accident date from 11/6/07 to 11/7/07, the date petitioner first sought treatment for his injury, and the date of the onset of his symptoms.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issue of accident and incorporates them herein by this reference.

Having found the petitioner has proven by a preponderance of the credible evidence that he sustained a repetitive injury to his back that arose out of and in the course of his employment by respondent and manifested itself on 11/7/07, the next issue is whether or not the petitioner's current condition of ill-being is causally related to the accident on 11/7/07.

It is un rebutted that prior to 11/7/07 petitioner had a history of chronic low back pain that was previously aggravated by specific lifting incidents, with the most recent being on 8/23/06, when he awakened with pain after moving furniture. At that time petitioner was diagnosed with chronic degenerative disc disease of the lumbar spine. Dr. Hauter was of the opinion that petitioner's lumbar MRI at that time did not show any structural problems or acute findings.

Dr. Schierer opined that petitioner's condition of ill-being as it relates to his low back was either caused, aggravated, or accelerated by the heavy lifting that the petitioner did at his job for respondent. Dr. Schierer opined that the petitioner's job at least partially caused and certainly aggravated his condition.

Dr. Hauter noted that petitioner had chronic back pain that had been present on and off since 2006, when he was injured at home. Dr. Hauter was of the opinion that the onset of pain in November of 2007 was very similar to the onset of pain in the past and was unable to relate petitioner's back pain to any injury at work. Dr. Hauter also opined that he could find no evidence of aggravation cause by the type of work reviewed from Pella Corporation. Dr. Hauter was of the opinion that petitioner's chronic pain is not a medical problem caused by repetitive work, and his back pain is not a work related problem but a chronic condition. Dr. Hauter opined that the cause of the degeneration of the lumbar spine and chronic back pain was petitioner's post operative neuropathy in his left leg that led to a drop foot and an altered gait since he was 19 years old.

The arbitrator adopts the opinions of Dr. Schierer and finds the accident did not cause petitioner's chronic degenerative condition, but his repetitive work for respondent, that included a lot of repetitive lifting of heavy windows, did aggravate his pre-existing degenerative lumbar spine condition.

The arbitrator further finds, based on the records of Dr. Hauter dated 11/10/11 that the petitioner's aggravation of his preexisting degenerative condition was temporary and resolved by that date based on petitioner's history to Dr. Hauter. The petitioner told Dr. Hauter that he has occasional pain that comes and goes, but overall he has no impairment. He also reported that he was working without restrictions, was not treating, and was back to baseline.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner sustained a temporary aggravation of his preexisting degenerative condition that resolved by 11/10/11.

J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issues of accident and causal connection and incorporates them herein by this reference.

Based on the findings that the petitioner sustained an accidental injury to his back on 11/7/07 and he sustained a temporary aggravation of his preexisting degenerative condition that resolved by 11/10/11, the arbitrator finds the respondent shall pay the following unpaid bills pursuant to Section 8(a) and 8.2 of the Act. The arbitrator further finds that the respondent shall get credit for any bills already paid.

- McDonough District Hospital –services rendered 3/20/09 in the amount of \$780.95
- McDonough District Hospital –services rendered 31/4/08 in the amount of \$394.52;
- Dr. Rajan Mullangi –services rendered 1/4/08 in the amount of \$600.00

- Reimbursement to petitioner for co-payments made to Dr. Daren Osborn for treatment rendered 11/8/07 and 11/12/08 in the amount of \$48.00
- Galesburg Orthopedic Services Ltd – services rendered 7/7/08 in the amount of \$51.00

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issues of accident and causal connection and incorporates them herein by this reference.

Petitioner is alleging he was temporarily totally disabled from 11/15/07 through 1/24/08. Respondent claims petitioner was not temporarily totally disabled as the result of any work related accident.

The arbitrator finds Dr. Arnold authorized petitioner off work on 11/17/07. On 12/10/07 Dr. Arnold released petitioner to light duty work. Petitioner attempted work on 12/12/07, but stopped after three hours because of increased pain. Dr. Arnold referred petitioner to Dr. Schierer. On 12/17/07 Dr. Schierer authorized petitioner off work. On 1/24/08 petitioner began working for NTB Bower.

Based on the above, the arbitrator finds the petitioner was temporarily totally disabled from 11/17/07 -12/11/07, and 12/17/07 through 1/24/08, a period of 9-1/7 weeks.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issues of accident and causal connection and incorporates them herein by this reference.

Having found the petitioner sustained a temporary aggravation of his preexisting degenerative condition that resolved by 11/10/11, the arbitrator finds the petitioner sustained no permanent partial disability as a result of the accident on 11/7/07. The arbitrator bases this opinion on the fact that on 11/10/11 petitioner told Dr. Hauter that he has occasional pain that comes and goes, but overall he has no impairment. He also reported that he was working without restrictions, was not treating, and was back to baseline.

STATE OF ILLINOIS)
) SS.
 COUNTY OF WILL)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Hugh McCord,
 Petitioner,

14IWCC0026

vs.

NO: 11 WC 44641

Diocese of Joliet,
 Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, temporary total disability, causal connection, medical expenses, prospective medical expenses, notice, permanent partial disability, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 3, 2013 is hereby affirmed and adopted.

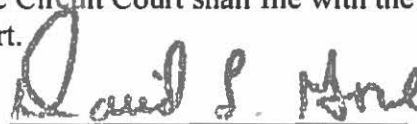
IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:

JAN 21 2014

DLG/gal
 O: 1/16/14
 45


 David L. Gore


 Michael J. Brennan


 Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

McCORD, HUGH

Employee/Petitioner

Case# 11WC044641

14IWCC0026

DIOCESE OF JOLIET

Employer/Respondent

On 6/3/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

1357 RATHBUN CSERVENYAK & KOZOL
LUIS MAGANA
3260 EXECUTIVE DR
JOLIET, IL 60431

1739 STONE & JOHNSON CHTD
PATRICK DUFFY
200 E RANDOLPH ST 24TH FL
CHICAGO, IL 60601

STATE OF ILLINOIS)

)SS.

COUNTY OF Will)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION

1417 CC0026

Hugh McCord

Employee/Petitioner

v.

Diocese of Joliet

Employer/Respondent

Case # 11 WC 44641

Consolidated cases: N/A

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **George Andros**, Arbitrator of the Commission, in the city of **New Lenox**, on **04/08/2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

On 07/15/2011, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accident.

In the year preceding the injury, Petitioner earned \$49,141.00; the average weekly wage was \$945.02.

On the date of accident, Petitioner was 53 years of age, *married* with 0 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$0.

Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.

ORDER

- Petitioner did not sustain an accident arising out of his employment.
- Benefits under the Act are denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

01 George J. Anderson
Signature of Arbitrator

May 31, 2013
Date

JUN -3 2013

Findings of Fact 11 WC 44641

Petitioner is a maintenance supervisor for the Diocese of Joliet. He reports to work each day at the pastoral center in Romeoville. He is in charge of maintenance and upkeep of the pastoral center's buildings and grounds and four other buildings within the Diocese. There are three employees who work under his supervision during the day and two who work under his supervision at night.

His duties include custodial (housekeeping) work and maintenance. With respect to housekeeping his tasks are limited to training employees. Maintenance consists of repairs and preventive maintenance. He agreed that most of his duties were of a supervisory nature. He did not use power tools on a daily basis. He testified that he used power tools two or three days per week. (On cross-examination, he said that he used power tools one or two times per week.) His supervisor, Chris Nye, testified that Petitioner used tools occasionally; i.e., one day per week. When Petitioner did use power tools, Petitioner testified that he would use them for two or three hours per day. Petitioner identified the various tools that he used. His other duties include checking lockers and moving beds in the retreat center. He uses a computer about one hour per day to send emails, check estimates, and check employees' time sheets. It is not an ergonomic keyboard. He agreed that his time on the keyboard was not constant typing.

Petitioner reviewed the Diocese's job description (RX 2), and agreed that it was generally accurate. He disagreed that it was complete. He cited his use of power tools in addition to the job description's reference to using a computer and driving a truck. He added that he needed to use hand tools in an awkward position.

He started with the Diocese in 1996. He had no problem with his hands prior to 1996. He has been a supervisor since 2005. He testified that he first noticed problems in his hands between Christmas and New Years in 2010. He was breaking up a floor in a church at the pastoral center. He noticed numbness in his hands and then noticed pain. In February 2011 there was a blizzard in the area, and he spent two days removing snow from the grounds. He used a plow on a truck, a plow on a tractor, and a snow blower. He noticed increased numbness while operating the truck. Petitioner agreed that he never told any of his physicians that the onset of symptoms was related to breaking up the floor or snow removal. Following the snow removal in February 2011, he noticed numbness while using a screw gun and other power tools. He identified no hobbies that would cause carpal tunnel syndrome.

On cross-examination, Petitioner agreed that his job was primarily one of supervising and coordinating workers. When he uses the computer, it is not for significant typing. He agreed that the Diocese's job description is generally accurate.

He first sought medical treatment at the Pain Center of Chicago/Dr. Orbegozo on July 15, 2011. He complained of bilateral symptoms with the symptoms in the left hand being half as bad as the symptoms in the right. After he told Dr. Orbegozo about his job duties, Petitioner concluded the job duties were a cause of his symptoms.

Petitioner's primary purpose for presenting to the Pain Centers of Chicago on July 15, 2011 was to address chronic low back pain. Petitioner reported that his back had been more bothersome lately and that he had been relying on Dilaudid a lot. Petitioner also complained of bilateral hand pain with numbness that was becoming worse. Petitioner thought he had carpal tunnel syndrome, but had never been worked up for it before. Petitioner's hand pain was located in the third and fourth digits. Petitioner also stated that he would occasionally use a splint for his right hand at night, but that it was old and not effective anymore. Petitioner was then examined and diagnosed with lumbar disc disease, lumbosacral spondylosis, and facet syndrome. He was also diagnosed with bilateral hand pain and ordered to undergo an EMG. Petitioner was also given orders for bilateral hand splints and re-fills for his prescriptions. (Px 5).

Petitioner underwent the EMG on July 21, 2011 at Provena Saint Joseph Medical Center. Prior to the exam he reported a several month history of numbness, tingling, and burning sensation in the right second, third, and fourth digits. His symptoms often occurred with nocturnal paresthesias, while driving, and while using his right hand. Petitioner's left hand symptoms were not as prominent. The results of the EMG revealed moderately to markedly severe right carpal tunnel syndrome and mildly to moderately severe left carpal tunnel syndrome. (Px 2).

Petitioner then presented to Dr. Alan H. Chen, plastic surgeon, on September 9, 2011 and complained of bilateral numbness and tingling in his hands. Dr. Chen's examination of Petitioner was positive bilaterally for Tinel and Phalen's tests. Dr. Chen diagnosed Petitioner with bilateral, right greater than left, carpal tunnel syndrome, synovitis, and trigger finger. Dr. Chen then recommended that Petitioner undergo surgical intervention for same. (PX 4).

Surgery to the right hand was performed on September 16, 2011 and to the left hand on December 23, 2011. Following the September 16, 2011 surgery, he took one week of vacation and then returned to full duty. Following the second surgery, he took a week off, but this was the week between Christmas and New Years and their facility was closed.

Currently, he notices dropping things, mostly with his right hand. He also notices cramping in winter. He has worked full duty since his return to work following the second surgery. He has not seen a physician for treatment since Dr. Chen in January 2012.

Petitioner's supervisor, Chris Nye, testified. Nye is the Director of Buildings and Properties for the Respondent and has been for 4-1/2 years. Petitioner is the maintenance supervisor for the pastoral center. Petitioner works under Nye's direct supervision. Nye described Petitioner's duties as supervising the maintenance and upkeep of the pastoral center and four buildings in Joliet. Nye identified Respondent's Exhibit 2 as the Job Description for the Petitioner. It truly and accurately depicts Petitioner's job duties.

The machines and tools identified in Exhibit 2 include a computer and driving a truck. Nye added that occasionally Petitioner had to use hand tools. He estimated that this was one day per week. On cross-examination, Nye testified that it is incorrect that Petitioner used power tools two or three hours per day, two or three days per week. He agreed that on occasion Petitioner performs the work rather than delegating the work to his employees. He knows Petitioner to be truthful and honest. He sees Petitioner about one-half hour per day.

On August 29, 2011 Petitioner presented for a Section 12 examination with Dr. Atluri. Dr. Atluri authored a September 1, 2011 report and reports on September 27 and September 29, 2011. At the August 29, 2011 examination, Petitioner provided a history of an onset of symptoms in the one or two months preceding the IME. He attributed the symptoms to his usual job duties. Petitioner described his job as a working supervisor. Dr. Atluri's diagnosis included bilateral carpal tunnel syndrome. He reviewed a job description provided by the employer and noted the discrepancy between the duties as described by Petitioner and the duties provided by the Respondent. With respect to causal connection, Dr. Atluri stated as follows:

"If the patient's usual work duties involve frequent forceful gripping, heavy lifting, awkward positioning as described by the patient, then his bilateral carpal tunnel syndrome would be considered related to his work activities. If, however, the exposure to these type of duties is varied, infrequent and limited, then this patient's carpal tunnel syndrome would be considered a chronic degenerative condition not related to his work activities." (RX 3).

Dr. Atluri reviewed the Diocese's job description, RX2, and generated his September 27, 2011 Addendum. (RX 4). He concluded that Petitioner's carpal tunnel syndrome is not related to his job duties. After reviewing additional medical records, Dr. Atluri maintained his opinion of no causal connection. (RX 5).

Petitioner offered into evidence Dr. Alan Chen's July 11, 2012 narrative report. (PX 6). Dr. Chen summarized his treatment of Petitioner. With respect to causal connection, Dr. Chen offered the following:

"I believe given the description of his work, as described by the patient, of eight or more hours per day using power tools, drills, hammers, saws, leaf blowers and snow plows, all of which involves forceful gripping and awkward positions, the development of carpal tunnel syndrome with flexor tenosynovitis and triggering of his right middle finger would be considered related to his work activities."

Conclusions of Law 11 WC 44641

(C) Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

(F) Is Petitioner's Condition of ill-being causally related to the accident?

It is Petitioner's burden to prove that his injury arose out of his employment. In this case it appears that Petitioner has a two pronged theory to establish that his carpal tunnel condition and his right middle finger triggering is related to his employment.

First, Petitioner testified that the initial onset of symptoms occurred while breaking up a floor in a church between Christmas and New Years in 2010 and then again while removing snow in February 2011. The accuracy of Petitioner's testimony is not persuasive due to the absence of any corroborating evidence in his medical records that associates the onset of symptoms with these activities. Moreover, there is no probative nor persuasive medical opinion that either of these activities would cause or contribute to carpal tunnel syndrome or trigger finger.

Second, Petitioner asserts that his usual job duties were a cause of his carpal tunnel syndrome. Petitioner testified to having a supervisory job but having to use power tools two or three days per week, two or three hours per day, and having to use a computer one hour per day. Petitioner's supervisor, Chris Nye, disputes that Petitioner's duties were as physical as described by Petitioner.

Regardless of whether Petitioner's description or Nye's description is accurate, Petitioner's supporting medical opinion from Dr. Chen is premised on Petitioner using various power tools eight or more hours per day. Although unstated in Dr. Chen's report, it is implied that his opinion is premised on Petitioner performing these duties five days per week. Petitioner testified to using power tools two or three times per week for two or three hours per day. There is no evidence that these duties with this level of frequency are a cause of Petitioner's carpal tunnel syndrome or trigger finger. Consequently, there is insufficient evidence to support Petitioner's claim.

Moreover, the arbitrator finds most persuasive Dr. Atluri's comment that if Petitioner's usual duties require frequent forceful gripping, heavy lifting, and awkward positioning, then the job duties would be a cause of Petitioner's injuries. In this case the evidence does not establish that Petitioner's job duties included frequent forceful gripping, heavy lifting, or awkward positioning.

Based upon a totality of the evidence the Arbitrator concludes as a matter of law and fact Petitioner did not sustain an accident arising out of his employment. Moreover, concludes Petitioner's injuries are not causally related to his job duties. Therefore, benefits under the Act are denied. (4)

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Leonard Schaller,

Petitioner,

vs.

NO: 10 WC 16068

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St. James Hospital,

Respondent.

DECISION AND OPINION ON §19(h) AND §8(a) PETITION

Petitioner filed a Petition under §19(h) and §8(a) of the Workers' Compensation Act requesting additional medical expenses and alleging a material increase in his disability since the Commission's Decision and Opinion on Review dated April 12, 2012, in which Petitioner was found to have permanently lost 27.5% of the use of his left arm, 69.57 weeks. The issues on Review are whether Petitioner's permanent disability has materially changed for his left shoulder condition of ill-being since the last arbitration hearing on August 26, 2011 and whether Petitioner is entitled to reasonable and necessary medical expenses. In his brief, Petitioner additionally requested an award for his right shoulder, arguing that his right shoulder condition of ill-being was due to overcompensation for his left shoulder injury and restrictions. The Commission, after considering the entire record, grants Petitioner's §19(h) Petition for the left shoulder condition, finding that Petitioner's permanent disability has materially increased to the extent of an additional 12.5% loss of the use of his left arm and has now permanently lost 40% of the use of his left arm and grants Petitioner's §8(a) Petition for reasonable and necessary medical expenses for left shoulder treatment in the amount of \$480.81. However, the Commission denies any permanent disability for the right shoulder condition of ill-being and denies any medical expenses for treatment of the right shoulder for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Arbitration was held on August 26, 2011. In her Decision filed with the Commission September 14, 2011, Arbitrator Pulia noted that the parties stipulated to the following: accident arising out of and in the course of Petitioner's employment on February 2, 2010, causal

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connection, Respondent agreed to accept liability for medical expenses, TTD from June 23, 2010 through July 6, 2010, two weeks, and Respondent paid \$1,829.94 in TTD benefits. On the sole issue of nature and extent of permanent disability, Arbitrator Pulia awarded 32.5% loss of use of the left arm, 82.225 weeks at \$664.72 per week.

At the arbitration hearing, Petitioner testified that on February 2, 2010, as he lifted a 100 pound steri-scope washer with co-worker, he felt something rip in his left shoulder. Petitioner treated with Respondent's Occupational Health, Dr. Aribindi and Dr. Mehl. Petitioner underwent treatment consisting of physical therapy, prescribed medications and cortisone injections. Dr. Mehl performed surgery on June 23, 2010 consisting of a left shoulder arthroscopy, subacromial decompression, debridement of a partial rotator cuff tear and repair of a complete anterior labral tear. Petitioner attended post-operative physical therapy. On January 7, 2011, Petitioner reported to Dr. Mehl he had improvement with his last injection. Petitioner complained of aching pain and swelling. His motion improved to 165°, flexion and abduction were significantly improved and there was mild swelling. Dr. Mehl's impression was improved left shoulder inflammation. Dr. Mehl discharged Petitioner from his care, prescribed medications and released Petitioner to return to work at full duty. On January 11, 2011, Petitioner was seen at Respondent's Occupational Health. It was noted that on examination, there was no swelling or redness, there was mild tenderness over the anterior aspect and full range of motion. Petitioner was released to full duty without restrictions and he was to be seen as needed. Petitioner testified that he noticed some numbness and difficulty lifting with his left arm at times. His fingers would go numb if he lifted more than 20 pounds. He had difficulty with overhead lifting and painting. When his left hand/arm got numb, Petitioner would shake it. He only slept 2 to 3 hours at a time. He had some loss of strength. His left shoulder froze when doing overhead work. At work Petitioner would get help lifting monitors overhead. He had numbness when waxing his car and turning a screwdriver. Petitioner did not seek any further treatment and believed his left arm was "as good as it would get."

2. Respondent reviewed on the sole issue of nature and extent of permanent disability. Oral arguments were held on February 9, 2012. In its April 12, 2012 Decision and Opinion on Review, the Commission modified the Arbitrator's Decision finding that Petitioner permanently lost 27.5% of the use of his left arm (69.57 weeks) and affirmed all else.
3. Neither party filed an appeal and the Commission's April 12, 2012 Decision and Opinion on Review became final.
4. Petitioner filed this §19(h) and §8(a) Petition on November 9, 2012. Hearing on the §19(h) and §8(a) Petition was held before Commissioner Basurto on June 19, 2013.
5. At the June 19, 2013 hearing on the §19(h) and §8(a) Petition, Petitioner testified that after the August 26, 2011 arbitration hearing, he continued treating with Dr. Mehl. He saw Dr. Mehl in the fall of 2011 and explained to him how he was doing (Tr 6). At that point Petitioner was doing okay. He had undergone a second surgery and was having a little bit of problems. Dr. Mehl gave him a cortisone injection in November 2011 into his left shoulder (Tr 7). Into

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2012, Petitioner continued to work full time at the same job he had before (Tr 7). Petitioner saw Dr. Mehl in January 2012 and he recommended some additional surgery (Tr 7-8). He awaited approval for the surgery from Respondent's workers' compensation insurer (Tr 8).

Subsequently, approval was given and Petitioner underwent repeat left shoulder surgery on February 14, 2012 by Dr. Mehl at St. Francis (Tr 8). Dr. Mehl had Petitioner off work for a little under a week post-op and then released him to return to work at light duty. For the 6 days Petitioner was off work, he received TTD benefits (Tr 8). Dr. Mehl gave Petitioner work restrictions which Respondent accommodated (Tr 9). He was wearing a sling and had restrictions of no use of his left arm (Tr 9). Petitioner was able to do light duty work provided by Respondent during the spring and summer of 2012 (Tr 9). He periodically saw Dr. Mehl and underwent some physical therapy at Mett Therapy at St. James in March and April 2012 (Tr 9). In May 2012, Petitioner's restrictions were changed to no lifting over 20 pounds with the left arm and Respondent accommodated those restrictions (Tr 10). As spring turned into summer, Petitioner continued with physical therapy and followed-up with Dr. Mehl and his associates (Tr 10).

Petitioner testified that in the spring of 2012, he also had complaints of his right shoulder (Tr 10). He testified that he felt something weird in his right shoulder and told Dr. Mehl, who referred him to Dr. Nikkel. Petitioner saw Dr. Nikkel, who ordered a CT scan and MRI. After the results of these diagnostic tests, Dr. Nikkel told Petitioner there was a slight tear in his right shoulder (Tr 10-11). Petitioner continued to work light duty during the summer of 2012 (Tr 11). In June 2012, Petitioner received some injections into his left shoulder (Tr 11). In early June 2012, Dr. Mehl released Petitioner to return to work at full duty (Tr 11). At that point, Petitioner returned to his regular job (Tr 11). His last visit with his treating physician was in the summer of 2012 (Tr 11). He still works his full-duty job with Respondent, with the same job title and same duties as before the February 2, 2010 injury (Tr 12). His salary increased due to raises. At Respondent's request, in May 2013 Petitioner saw Dr. Romeo for a medical examination (Tr 12).

In conjunction with his treatment, Petitioner was given various bills by the medical providers (Tr 13). Px2 is a compilation of those bills. The vast majority of those bills have been paid by Respondent (Tr 13). There are a few bills that are disputed as to the right shoulder (Tr 13). There are a few balances outstanding (Tr 14). Between the last arbitration hearing on August 26, 2011 and this hearing, Petitioner has not had any other accidents or injuries at work or at home and no motor vehicle accidents (Tr 14).

Petitioner testified he notices that he only sleeps 3 or 4 hours a night and his left shoulder wakes him up. His left fingers are going numb and he cannot put his left hand over his head for very long because it starts hurting (Tr 14). He takes over the counter Naprosyn. He puts ice on his left shoulder because it swells up (Tr 15). Petitioner used to be able to lift over his head and hold, like take a monitor down by himself, but now he has to have somebody else help him do it (Tr 15). Petitioner's job requires him to move monitors and equipment around the facility (Tr 16). Petitioner has a little bit of a problem if he needs to reposition a monitor that is chest or shoulder height or above his head (Tr 16). When he goes over his head, his left shoulder locks up. His left shoulder pops every once in awhile when he brings it down. Once his left arm is down, his left fingers will go numb, and then once he puts his left arm down to his side, the

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finger and shoulder numbness goes away (Tr 16). He has a hard time sleeping and sleeps about 3 hours a night because his left shoulder keeps waking him up. If he lays on his left shoulder, it wakes him up, then he has to go back out on the couch and tries to sleep (Tr 17).

On cross-examination, Petitioner acknowledged that he testified at the August 26, 2011 arbitration hearing that he had difficulty putting a shirt on, that his left shoulder would go numb, that he could not lift his left shoulder over his head, that his left hand went numb when he attempted to lift his left arm, that his left shoulder kept swelling up, that he had neck tingling, that he had difficulty sleeping 2 to 3 and more than 3 hours a night, that he felt he had lost strength in his left shoulder, that he had to use his right arm to lift more than 10 to 15 pounds, that his left shoulder freezes up, that his left shoulder went numb when he attempted to wash and wax his car and that he took Naprosyn and Vicodin (Tr 18-21). Petitioner acknowledged he received an award after the arbitration hearing. When Petitioner saw Dr. Romeo in May 2013 for an examination at Respondent's request, he told Dr. Romeo he no longer had any complaints referable to his right arm (Tr 21). The job description for his job at Respondent was shown to him by his attorney and he testified that the job description was fairly accurate (Tr 22). When Petitioner went to see various treating physicians for his complaints of developing right shoulder pain, he did not provide them with any written job description as he did not have one with him (Tr 22).

On re-direct examination, Petitioner testified that the problems that he had back in 2011 still bother him (Tr 23). At the August 26, 2011 arbitration hearing, Petitioner had left shoulder numbness and this is about the same now (Tr 23). His difficulty with overhead range of motion is a little bit worse now (Tr 24). Back in 2011, the numbness was in his biceps and he did not have any numbness in his hands (Tr 24). He still has left shoulder swelling, about the same as before (Tr 24). Petitioner has tingling in the left side of his neck and down the top of his left shoulder (Tr 25). In 2011, the sleeping problem was caused by biceps numbness (Tr 26). His sleeping problem now is if he lays on his left side, he gets numbness from the biceps all the way down to his left fingers. He did not have this before (Tr 26). Petitioner still washes and waxes his car and gets finger numbness (Tr 27). Respondent never provided him with a written job description before this hearing (Tr 27). Petitioner told his doctor that he worked in bio-med and that he fixed equipment; that was all his doctor asked (Tr 28). Everything else he told his doctor was how he was feeling and what was happening (Tr 28).

On re-cross examination, Respondent's attorney read from p.15 and p.16 from the arbitration transcript of Petitioner's testimony: "Question. What you need to do is give her examples of what you do and what you physically notice about yourself when you try to do certain activities: Lifting, moving the arm and the leg. Answer. If I try to lift over my head and do what I need to do, my hand goes numb?" (Tr 28). Petitioner did not deny that that was his testimony in 2011 (Tr 29).

6. WellGroup Health Partners records, Px3, indicate Petitioner saw Dr. Mehl on September 19, 2011. Dr. Mehl noted that Petitioner underwent a left shoulder arthroscopy, labral repair and debridement of partial rotator cuff tear on June 23, 2010. Dr. Mehl indicated he last saw Petitioner on December 3, 2010 and gave him a cortisone injection, which did help. The records indicate that Dr. Mehl actually last saw Petitioner on January 7, 2011. Petitioner

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reported he started recently having increasing pain and stiffness. Respondent had approved Petitioner come back for treatment. On examination, Dr. Mehl noted some tightness and stiffness with scar tissue formation present. Active motion was limited by pain to only 110 degrees, flexion was to 140 degrees, abduction to 130 degrees with pain and motor, skin and sensation were intact. Dr. Mehl's impression was 1) status post left shoulder arthroscopy and 2) recurrent left shoulder inflammation and scar tissue. Dr. Mehl recommended a cortisone injection into the subdermal space and physical therapy, but Petitioner wanted to work this on his own. Dr. Mehl opined that if Petitioner continued to have limitations due to this problem, he might require a repeat surgery for scar tissue debridement and to inspect the labral repair. Dr. Mehl prescribed medications and continued full duty work. On November 7, 2011, Petitioner reported he continued to have significant pain from the scar tissue. On examination, Dr. Mehl found tightness and stiffness with scar tissue. Motion was passively limited to only 130 degrees flexion and abduction. Dr. Mehl's impression was the same. Dr. Mehl opined Petitioner had failed conservative treatment. Dr. Mehl recommended arthroscopic surgery for scar tissue debridement and to inspect the labral repair. He noted that this needed workers' compensation approval. On January 6, 2012, Petitioner reported continuing persistent pain and the prior cortisone injection had not helped. Dr. Mehl noted that the workers' compensation insurer approved the proposed surgery. On examination, Dr. Mehl found positive impingement sign, pain with stressing of the anterior labrum which was repaired, motion limited to 140 degrees flexion and abduction due to pain. Dr. Mehl's impression was 1) recurrent left shoulder impingement with scar tissue and 2) status post left shoulder arthroscopy. Surgery was scheduled for February 14, 2012 pending medical and cardiac clearance.

7. According to Dr. Crevier's cardiac records, Px4, Petitioner was seen on February 6, 2012 by physician's assistant Mark Ambrose. In describing the left shoulder, Mr. Ambrose noted, "Shoulder pain details; the location of the pain is deep, anterior, and posterior. The apparent precipitating event was work related trauma. He describes it as severe, constant, and sharp. Related symptoms include shoulder stiffness, warmth, swelling, and crepitus. To have surgery." A stress test was performed and it was negative. Petitioner was cleared for surgery.

In his February 14, 2012 Operative Report, Px5, Dr. Mehl noted a pre-operative diagnosis of 1) left shoulder recurrent pain; 2) scar tissue; 3) possible recurrent labral tear. Dr. Mehl performed the following procedures: 1) left shoulder arthroscopy; 2) repair of anterior labrum, excision of scar tissue. On February 17, 2012, Dr. Mehl noted that during surgery, Petitioner was found to have a recurrent anterior labral tear which was re-repaired and he had small partial rotator cuff and partial labral tears debrided and there was a significant amount of subacromial scar tissue present which was thoroughly excised. He did not require further bony decompression. The shoulder immobilizer that was dispensed was much too large and he was given a different size. Petitioner was prescribed medications and he was to follow-up in a week for suture removal. Dr. Mehl noted that Petitioner may return to work in the following week with absolutely no use of his left arm and he was to begin physical therapy in 2 weeks. Dr. Mehl wrote a slip which stated Petitioner was to return to work on February 20, 2012 with no use of his left arm.

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Petitioner saw Dr. Mehl on February 24, 2012 and reported he had returned to work at light duty that week. Dr. Mehl removed the sutures, continued light duty work with no use of his left arm and prescribed medications. Petitioner was to begin physical therapy on February 28, 2012. On examination March 16, 2012, Dr. Mehl found stable motion to 90 degrees flexion and abduction, which was not further stressed, swelling and tenderness over the course of the biceps tendon, which was common with a labral repair. Petitioner was to continue physical therapy and to not use his left arm. On April 13, 2012, Petitioner reported he was attending physical therapy and working light duty with no use of his left arm. He still required pain medications. Petitioner reported he was having difficulty sleeping as well. On examination, Dr. Mehl found good active motion to 130 degrees flexion and 120 degrees abduction, passive motion to 150 flexion and abduction, strength was still weak at 70% as expected and anterior soft tissue swelling. Petitioner was to continue physical therapy and light duty with no use of the left arm. Dr. Mehl prescribed pain medications and a sleep aid. (Px3).

8. In the May 10, 2012 Physical Therapy Report, Px6, the therapist noted that Petitioner had attended 27 sessions from March 1, 2012 through that date. The therapist noted weakness with overhead use. The therapist noted continued gains in active range of motion and that Petitioner displayed weakness with more than 120 degrees elevation. Petitioner reported increased pain with overhead activities. There was no mention of Petitioner's right shoulder.

On May 14, 2012, Petitioner reported to Dr. Mehl that he was still having pain and swelling. Dr. Mehl noted that in physical therapy, Petitioner was doing 30 pound lifting, but was having difficulty with that. Dr. Mehl recommended a cortisone injection into the subacromial space of the left shoulder for pain. Dr. Mehl changed restrictions to continuing light duty with lifting up to 20 pounds with the left arm and limited reaching above shoulder level. Petitioner was to continue medications.

9. According to the records of Bone & Joint Physicians, Px7, Petitioner saw Dr. Nikkel on May 23, 2012 on referral from Mark Ambrose, the Physician Assistant to Dr. Crevier. Dr. Nikkel noted that he had not seen Petitioner for a little over 3 years. Petitioner complained of right shoulder pain. The Commission notes that this was the first time it is noted in the medical records Petitioner's complaints of right shoulder pain since the February 2, 2010 accident. Dr. Nikkel noted a 2007 right shoulder arthroscopy and Type II SLAP repair. Dr. Nikkel noted that Petitioner's complaints were in the AC joint region and posterior region of his right shoulder. Dr. Nikkel noted the following: "He denies any injury. Apparently he had multiple surgeries on his left shoulder by Dr. Mehl, for whatever reason, with revision because of inadequate repair and failure of repair. He believes he may have injured it. He may also have issues with overcompensation." On examination of the right shoulder, Dr. Nikkel found full flexion and abduction, good strength, mildly positive impingement, reduced external rotation, the arc of motion was reduced with both external rotation and internal rotation, acute tenderness in the AC joint region, posterior acromion and no instability. X-rays of the right shoulder revealed some mild degenerative changes of the AC joint along with Type II acromion. Dr. Nikkel's impression was internal derangement of the right shoulder and Type II acromion with degenerative changes of the AC joint. Dr. Nikkel recommended a CT arthrogram because Petitioner could not undergo an MRI due to stents.

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10. Mett Physical Therapy records, Px6, indicate Petitioner attended physical therapy through June 5, 2012. The Commission notes that there was no mention of Petitioner's right shoulder in those records.

On June 6, 2012, Dr. Mehl noted Petitioner was given a cortisone injection, but reported he still had pain and swelling. On examination, Dr. Mehl found full passive motion to 150 degrees flexion and abduction; active motion was limited to 135 degrees flexion and 120 degrees abduction. Dr. Mehl recommended left shoulder manipulation under anesthesia. Petitioner was to continue physical therapy. Dr. Mehl changed restrictions to continuing light duty with lifting up to 30 pounds with left arm. Dr. Mehl prescribed medications and noted that workers' compensation approval was needed for the manipulation. Dr. Mehl noted that after the manipulation and 5 weeks of additional physical therapy, he would declare Petitioner at maximum medical improvement. (Px3).

In his June 8, 2012 Occupational Health Injury Report, Rx2, Dr. Mehl noted that Petitioner may return to work at full duty with no restrictions on June 11, 2012.

11. A right upper extremity CT arthrogram with contrast was performed on June 1, 2012 and was compared to an August 11, 2006 MRI. The radiologist's impression was that there was no evidence of a full-thickness rotator cuff, tendon tear or muscular atrophy. There did appear to be attenuation of the articular cartilage in the glenohumeral joint. Post-operative changes were noted in the superior glenoid. No fracture or dislocation was seen. On June 19, 2012, Dr. Nikkel reviewed the CT arthrogram and noted it showed a labral tear and the rotator cuff was intact. A cortisone injection was requested by Petitioner and was given. (Px7).

12. At Respondent's request, Petitioner saw Dr. Romeo. In his May 1, 2013 report, Rx3, Dr. Romeo noted that originally this evaluation was scheduled for Petitioner's left shoulder, but prior to the appointment, the cover letter asked questions about the right shoulder. The adjuster was contacted for clarification. The adjuster requested evaluation for Petitioner's right shoulder only at this time. Dr. Romeo noted that he understood that Petitioner's left shoulder was a work-related injury and part of this total problem. Petitioner did not bring x-ray films or MRI films with him to the evaluation. X-rays were not taken this day. Dr. Romeo noted the February 2, 2010 left shoulder injury. Dr. Romeo noted, "The question today is regarding his overuse injury of his right shoulder." Dr. Romeo noted that Petitioner was seen on February 10, 2010 by Dr. Aribindi for a left shoulder evaluation and the previous right shoulder surgery was noted, but Petitioner had no complaints of his right shoulder at that time. Dr. Romeo noted that on January 6, 2012, Dr. Mehl noted no right shoulder complaints or problems. Dr. Romeo noted that the same was true for Dr. Mehl notes on February 14, 2012 and May 14, 2012. Dr. Romeo noted Dr. Nikkel's May 23, 2012 notes regarding Petitioner's chief complaint of his right shoulder, diagnosis, diagnostic test results and treatment. Petitioner reported that currently he had no right shoulder symptoms or problems. Petitioner reported his left shoulder injury and treatment. Petitioner reported his right shoulder occasionally gets sore and has some discomfort in the anterior aspect. Petitioner reported he continued to have persistent left shoulder pain despite his treatment to date.

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On right shoulder examination, Dr. Romeo found no erythema, ecchymosis or edema. There was some dystonic movement of his trapezius with a shoulder shrug on the right side, but forward elevation with no dyskinesia was noted. Active forward flexion was to 165 degrees, abduction to 130 degrees, external rotation to 60 degrees on the left side and internal rotation to the T10 level. There was mild tenderness to palpation of his biceps tendon, no pain to palpation over his AC joint, rotator cuff strength was 5/5 without any pain, negative impingement testing and negative Jobe, Hawkins, Speed and O'Brien testing. No diagnostic imaging was obtained or reviewed for the right shoulder. Dr. Romeo opined that Petitioner most likely had a right shoulder strain and/or tendonitis that had since resolved. Dr. Romeo was asked whether the right shoulder condition was causally related to the February 2, 2010 accident either directly or by overcompensation. Dr. Romeo opined that there is no objective evidence either in the medical records or on complaint that day by Petitioner that the right shoulder condition is directly related to the February 2, 2010 work related injury. Dr. Romeo opined that Petitioner could continue working full duty and opined that no additional treatment was necessary. Dr. Romeo opined there was no permanent disability for Petitioner's right arm or shoulder. Dr. Romeo did not address Petitioner's left arm.

13. Petitioner submitted various medical bills and these were admitted into evidence as Px2. The following medical bills were for treatment of the left shoulder:
-St. James Hospital: 1-20-12 through 6-18-12: \$250.57 balance due.
-cardiologist Dr. Crevier: 9-12-11 and 2-6-12: \$30 co-pay by Petitioner and \$200.24 balance due.
The following medical bills were for treatment of the right shoulder:
-Bone & Joint Physicians: 5-23-12: \$30 co-pay by Petitioner and \$171.40 balance due.
-Ingalls Memorial Hospital: 5-26-12 and 6-1-12: \$1,581.64 balance due.

Respondent submitted Medical and Indemnity Payments and these were admitted into evidence as Rx4. Respondent also submitted into evidence a Job Description and this was admitted into evidence as Rx1.

Based on the record as a whole, the Commission grants Petitioner's §19(h) Petition for the left shoulder condition finding that Petitioner's permanent disability has materially increased to the extent of an additional 12.5% loss of the use of his left arm and has now permanently lost 40% of the use of his left arm and grants Petitioner's §8(a) Petition for reasonable and necessary medical expenses for left shoulder treatment in the amount of \$480.81. The Commission denies Petitioner's §19(h) Petition for any permanent disability for the right shoulder condition of ill-being and denies Petitioner's §8(a) Petition for any medical expenses for treatment of the right shoulder.

The Commission finds causal connection for Petitioner's left shoulder based on Dr. Mehl's records. Medical expenses for left shoulder treatment consist of the following: St. James Hospital: 1-20-12 through 6-18-12: \$250.57 balance due; Dr. Crevier: 9-12-11 and 2-6-12: \$30 co-pay by Petitioner and \$200.24 balance due. The total of these medical expenses is \$480.81 and the Commission awards this amount. Regarding nature and extent of permanent disability for Petitioner's left shoulder, the Commission notes that on February 14, 2012, Petitioner underwent 1) a left shoulder arthroscopy and 2) repair of anterior labrum, excision of scar tissue.

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Petitioner testified to his residuals, similar to his arbitration testimony. Petitioner returned to work at full duty. The Commission finds that Petitioner's permanent disability for his left shoulder has materially increased to the extent of an additional 12.5% loss of the use of his left arm and has now permanently lost 40% of the use of his left arm.

The Commission further finds that Petitioner failed to prove causal connection for his right shoulder condition of ill-being to the February 2, 2010 accident. The Commission notes that Dr. Nikkel only noted that Petitioner may have injured his right shoulder and also may have issues with overcompensation, but he does not opine causal connection. Petitioner denied any right shoulder injury to §12 Dr. Romeo. Petitioner did not mention any right shoulder complaints or problems to Dr. Mehl, his left shoulder treating doctor. Dr. Romeo was specifically asked whether the right shoulder condition was causally related to the February 2, 2010 accident either directly or by overcompensation. Dr. Romeo opined that there is no objective evidence either in the medical records or on complaint by Petitioner that the right shoulder condition is directly related to the February 2, 2010 work related injury. Dr. Romeo also opined there was no permanent disability for Petitioner's right arm/shoulder. The Commission also denies medical expenses related to treatment of the right shoulder.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's §19(h) Petition is hereby granted only for the left shoulder condition of ill-being and denied for the right shoulder condition of ill-being.

IT IS FURTHER ORDERED BY THE COMMISSION that Petitioner's §8(a) Petition is hereby granted only for medical expenses related to treatment of the left shoulder and denied for treatment of the right shoulder.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$664.72 per week for a period of 31.63 weeks, as provided in §8(e) of the Act, for the reason that Petitioner sustained a material increase in his disability to the extent of 12.5% loss of the use of his left arm. As a result of the accident of February 2, 2010, Petitioner now has sustained permanent loss of the use of his left leg to the extent of 40% under §8(e) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$480.81 for medical expenses under §8(a) of the Act subject to the Medical Fee Schedule.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

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Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$21,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:

JAN 21 2014

MB/maw

o10/31/13

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Mario Basurto

Michael P. Latz

David L. Gore

STATE OF ILLINOIS)BEFORE THE ILLINOIS WORKERS' COMPENSATION
) SS COMMISSION
COUNTY OF COOK)

Donald Bray,
Petitioner,

vs.

NO. 12 WC 10132

Star Contractor Supply, Inc.,
Respondent,

ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision of the Commission dated January 21, 2014, having been filed by Petitioner. Upon consideration of said Petition, the Commission is of the Opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision dated January 21, 2014 is hereby vacated and recalled pursuant to Section 19(f) for clerical error contained therein. The parties should return their original Orders to Commissioner Mario Basurto.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision shall be issued simultaneously with this Order.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to file for Review in Circuit Court.

DATED: APR 17 2014

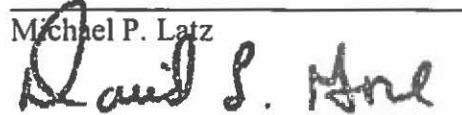
MB/mam
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Mario Basurto



Michael P. Latz



David L. Gore

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Donald Bray,
Petitioner,

vs.

NO: 12 WC 10132
14IWCC0028

Star Contractor Supply, Inc.,
Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causation, notice, average weekly wage and prospective medical care and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission finds Petitioner failed to provide proper notice to Respondent under Section 6(c) of the Act but that the time period for providing notice was tolled by Section 8(j) of the Act and proper notice was given under Section 8(j) of the Act.

The Commission notes that Petitioner's firm has indicated that the Arbitrator's decision contains internal contradictions regarding the date of accident. Petitioner contends that specifically the Arbitrator listed both January 13, 2011 and July 30, 2011 as the accident date. In reviewing the Arbitrator's decision, the Commission finds that the Arbitrator listed two separate dates for the date of accident in the decision. However, the dates of accident stated in the Decision are August 30, 2011 and January 13, 2011. The Commission finds that only a January 13, 2011 accident date should have been contained in the Arbitrator's decision.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall authorize the surgery recommended by Dr. Ortinau and Respondent shall pay all reasonable and necessary prospective medical expenses related to Section 8(a) and 8.2 of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case is remanded to the Arbitrator for a determination of further temporary total disability, if any, or of compensation for permanent disability pursuant to Thomas v. Industrial Commission, 78 Ill. 2d 327, 399 N.E.2d 322 (1980).

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: **APR 17 2014**


MB/jm

O: 12/12/13

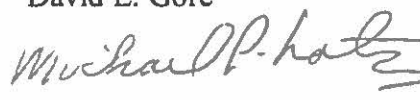
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Mario Basurto



David L. Gore



Michael P. Latz

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

BRAY, DONALD

Employee/Petitioner

Case# **12WC010132**

14IWCC0028

STAR CONTRACTOR SUPPLY INC

Employer/Respondent

On 5/15/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0293 KATZ FRIEDMAN EAGLE ET AL
CHRISTOPHER MOSE
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD
MICHAEL MOORE
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

STATE OF ILLINOIS)

)SS.

COUNTY OF Cook)

- | | |
|--------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
 19(b)

Donald Bray

Employee/Petitioner

v.

Star Contractor Supply, Inc.

Employer/Respondent

Case # 12 WC 10132

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Deborah Simpson**, Arbitrator of the Commission, in the city of **Chicago**, on **February 1, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☒ What was the date of the accident?
- E. ☒ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☒ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- M. ☐ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

14IWCC0028

FINDINGS

On the date of accident, **July 30, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$44,560.00**; the average weekly wage was **\$895.38**.

On the date of accident, Petitioner was **60** years of age, *married* with **0** dependent children.

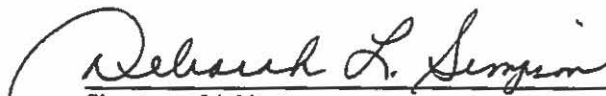
ORDER

- Respondent shall authorize the surgery recommended by Dr. Ortinau.
Respondent shall pay the costs of the medical treatment pursuant to the Act.

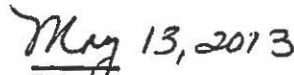
In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator



Date

MAY 15 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Donald Bray,

Petitioner,

vs.

Star Contractors,

Respondent.

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No. 12 WC 10132

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The parties agree that on August 30, 2011 the Petitioner and the Respondent were operating under the Illinois Worker's Compensation or Occupational Diseases Act and that their relationship was one of employee and employer. On that date the Petitioner reported to the Respondent that he had suffered a repetitive trauma injury resulting in bilateral carpal tunnel syndrome and that the injury arose out of and in the course of the Petitioner's employment with the Respondent.

At issue in this hearing is as follows: (1) Did an accident occur that arose out of and in the course of the Petitioner's employment with Respondent; (2) What is the date of the accident; (3) Was timely notice of the accident given to the Respondent; (4) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure; (5) What were the Petitioner's earnings the year prior to the accidental injury and the average weekly wage; (6) Were the medical services that were provided to the Petitioner reasonable and necessary? Has the Respondent paid all appropriate charges for all reasonable and necessary medical services; and (7) Is the Petitioner entitled to any prospective medical care?

STATEMENT OF FACTS

This case involves bilateral carpal tunnel syndrome ("CTS") which the Petitioner alleges was caused by repetitive activity while he was working for the Respondent. The attorneys for the parties completed and signed a Request For Hearing Form, which was admitted into evidence without objection as Arbitrator Exhibit #1.

The Arbitrator notes that in his Application the Petitioner alleged a date of accident of October 5, 2011. The Petitioner later filed an Amended Application in which he alleged a date

of accident of July 29, 2011. At the February 1, 2013, hearing of this case, the Petitioner asked for leave to amend his Amended Application on its face to allege a date of accident of July 30, 2011, the Respondent did not object and leave to amend was granted.

The Petitioner testified that he worked for the Respondent for about ten and one half years. He testified that at first he was employed as a welder for about three years, then he was promoted to shop supervisor or foreman, with assignment and supervisory duties. At that time he did not perform welding or door frame building on a regular basis. He testified further that for the last five to six years he has been a working foreman because the Respondent has systematically laid off individuals due to lack of work until they were down to the Petitioner and one other welder. The Petitioner stated that for the past five to six years the majority of his responsibilities has been welding and making door frames. He testified that he was laid off due to lack of work in December of 2011, and that about 1 month later the Respondent went out of business. He testified that the Respondent made metal door frames and metal doors.

The Petitioner testified that, except at the very end, he worked 8 hours a day 5 days a week for the Respondent during its last 5 to 6 years of operation. He testified that as the business slowed down in 2011, he sometimes only worked three or four days each week.

In describing his work day and responsibilities the Petitioner testified that while working as a working supervising foreman he would fabricate four door frames each hour. The Arbitrator notes that this corresponds to building one door frame every fifteen minutes. He testified that the door frame came in three pieces and that he and an assistant would put the frame onto a welding table to assemble it. He testified that he would first have to hit the frame with a hammer to make the frame tight, and then he would flip it over and do the same thing to the other side of the frame. The Petitioner testified that he was left-handed and that 80% of the time he held the hammer in his left hand and 20% of the time he held the hammer with his right hand. He testified that he spent about ten minutes hammering each door frame together. The Arbitrator notes that using a hammer ten minutes per door frame would account for forty minutes of every hour leaving the Petitioner only twenty minutes or five minutes per door frame to do all of the other tasks necessary to make a door frame.

The Petitioner testified that the next step in the door frame building process was to use a grinder to grind off the exposed rough surfaces. He testified that he would hold the grinder with both hands and move the grinder back and forth over the area that needed to be smoothed out. He demonstrated for the Arbitrator and the attorneys that he used the grinder in a downward angle of approximately 45 degrees. He testified that while using the grinder he felt vibration in his hands. He testified that he spent 45 minutes of each hour, or 11.25 minutes per door, using the grinder. Eighty-five minutes for four doors at this point.

The Petitioner testified that after grinding off the exposed rough surfaces he uses a welding unit to weld the pieces of the door frame so that the frame was tight. He used a MIG welder for this task. He stated that he welded with his left hand 100% of the time. He testified that during the hour in which he would fabricate four door frames he spent ten minutes of that time welding, which breaks down to 2.5 minutes of welding time for each door. The Petitioner testified that after the welding was done he would use the grinder again to smooth out any sharp edges. At this point we are at ninety-five minutes for the four doors.

According to the Petitioner's testimony it took the Petitioner 23.75 minutes to perform all of the individual tasks needed to assemble one door frame. This explanation did not include time to get the pieces and put them up on the table for assembly or to remove the completed door frame and put it wherever finished product was taken to next.

The Petitioner testified that at some point he began to notice that his hands would go numb while he was doing the grinding. He testified that he would shake his hands to get the numbness to stop. He thought his symptoms might be related to his work duties, but he was not sure. He sought medical treatment with his family doctor, Dr. George Georgiev at the Ottawa Regional Medical Center in 2011. Dr. Georgiev diagnosed carpal tunnel syndrome.

He testified that the second time he saw Dr. Georgiev for carpal tunnel syndrome that the doctor referred him to an orthopedic specialist at Rezin Orthopedics. He then called Rezin Orthopedics to schedule an appointment and was asked if his condition was related to his work. When he responded in the affirmative, he was told that he would have to have treatment authorized under workers' compensation. He then called the owner of Star Contracting, Alan Feldman, and reported this information to Mr. Feldman. Mr. Feldman asked Mr. Bray to see if he could obtain medical treatment under his group health insurance. When he told Mr. Feldman that they would not treat him under his group insurance, Mr. Feldman told him that he would call the doctor's office and find out. Mr. Feldman was not successful. Mr. Bray said he then completed paperwork to make a workers' compensation claim.

The medical records from Ottawa Regional Medical Center show that Petitioner became a new patient on January 13, 2011 and presented with a history of hyperlipidemia and hypertension. Dr. Georgiev performed a full exam of the skin, head, neck, eyes, ears, nose, throat, chest and lungs, cardiovascular system, abdomen, genitourinary, rectal, vascular, neurological, and musculoskeletal systems. This exam did include positive carpal compression tests and Tinel's signs. The doctor diagnosed hyperlipidemia, hypertension, COPD, benign hypertrophy of the prostate, osteoarthritis, back pain, and carpal tunnel syndrome. The recommendation for the carpal tunnel syndrome was for vitamins B1, B12, and C. (P. Ex #1).

The records also show that the Petitioner returned to see Dr. Georgiev on February 6th, March 18th, and May 2nd of 2011. There is no evidence that carpal tunnel was discussed or treated at these visits. On July 30, 2011, the Petitioner saw Dr. Georgiev for management of valvular heart disease. At that time the Petitioner told the doctor that his carpal tunnel was ~~getting worse;~~ that he was experiencing "burning fire like pains" in his hands at night and during the daytime when he was hammering. The doctor recommended he wear wrist splints and to consider physical therapy if he did not improve in two or three weeks. (P. Ex. #1).

On August 30, 2011, Petitioner returned to see Dr. Georgiev regarding his low back pain, and he also told the doctor that the wrist braces had not worked and there was no change in his symptoms. According to Dr. Georgiev, he did not want to undergo physical therapy but wanted a fix. Dr. Georgiev agreed to refer him to an orthopedist but wanted to wait until an MRI was done on his back so the orthopedist could also review that. On September 26, 2011, Dr. Georgiev stated he would refer Petitioner to an orthopedist for back pain and for carpal tunnel syndrome. (P. Ex. 1).

The records from Rezin Orthopedic Center show that Petitioner first saw Dr. Ortinau on October 20, 2011. A Referral Request form from Ottawa Regional Medical Center dated September 26, 2011 shows the reason for the referral to be bilateral carpal tunnel syndrome and degenerative joint disease in the thoracic and lumbar spine. A handwritten statement on the top of this form states: "9-30-11 patient said it is work related has not started a claim at work. Told patient we could not see him until he starts w/c process and gets approval. Patient stated he will call back." (P. Ex. 2).

On October 20, 2011, Dr. Ortinau diagnosed Petitioner with bilateral carpal tunnel syndrome and prescribed braces and anti-inflammatory medication. On November 17th, Dr. Ortinau again prescribed anti-inflammatories and ordered an EMG/NCV. On December 2nd, these neurodiagnostic studies revealed the presence of moderate carpal tunnel syndrome bilaterally. On December 8, 2011, Dr. Ortinau recommended surgical carpal tunnel release on the left hand followed by the right hand two to three weeks later. (P. Ex. 2).

Respondent had Petitioner examined by Dr. Michael Vender on January 19, 2012. According to Dr. Vender's report, Petitioner had a history of numbness and tingling in his hands and local discomfort which began six months earlier, and this had progressed since November or December 2011. Petitioner reported a burning sensation diffusely in his fingers greater on the right hand than the left. Dr. Vender noted that the electrodiagnostic studies demonstrated bilateral carpal tunnel syndrome. Dr. Vender felt it would be reasonable to proceed with surgery. Dr. Vender noted that Petitioner described a use of hammers and grinders, but opined that it was not clear how persistent or frequent these activities were. (R. Ex. 2).

Subsequently, on February 13, 2012, Dr. Vender issued a letter which stated that he reviewed a job description described as "Hollow Metal Shop Supervisor" which described the job as 25% putting stock away, 25% designating work to others, 25% monitoring inventory, and 25% welding frames. Dr. Vender concluded that Mr. Bray did not perform forceful activities on a regular and persistent basis and stated that his work activities would not contribute to the development of bilateral carpal tunnel syndrome. (R. Ex. 3). According to the undisputed testimony of the Petitioner, in 2011 and 2012, he was a working supervisor, spending the majority of his day making door frames as there were only two welders working for the Respondent, the Petitioner and another individual. It appears that the conclusions of Dr. Vender are not based upon an accurate account of the position that Petitioner was working in 2011 and the early part of 2012.

Dr. Ortinau issued a report regarding Petitioner's condition on June 15, 2012. Dr. Ortinau felt that Petitioner's carpal tunnel syndrome was related to his work duties of welding door frames, hammering door frames, and using hand grinders and buffers for eight hours per day. (P. Ex. 3).

CONCLUSIONS OF LAW

Courts considering various factors have typically set the manifestation date on either the date on which the employee seeks medical treatment for the condition or the date on which the

employee can no longer perform work activities. *Durand v. Industrial Comm'n*, 224 Ill.2d 53, 72, 862 N.E.2d 918 (2006).

An employee who suffers a repetitive trauma injury must meet the same standard of proof under the Act as an employee who suffers a sudden injury. See *AC & S v. Industrial Comm'n*, 304 Ill.App.3d 875, 879, 710 N.E.2d 837 (1st Dist. 1999)

An employee suffering from a repetitive trauma injury must still point to a date within the limitations period on which both the injury and its causal link to the employee's work became plainly apparent to a reasonable person. *Williams v. Industrial Comm'n*, 244 Ill.App.3d 204, 209, 614 N.E.2d 177 (1st Dist. 1993)

When the injury manifested itself is the date on which both the fact of the injury and the casual relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person. See *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill.2d 524 505 N.E.2d 1026 (1987).

Section 6(c) of the Illinois Workers' Compensation Act states that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. Section 6(c) (2) states that "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." 820 ILCS 305/6(c)

The purpose of the notice provisions is to enable the employer to investigate promptly and to ascertain the facts of the alleged accident. *City of Rockford v. Industrial Commission*, 214 N.E.2d 763 (1966) The giving of notice under the Act is jurisdictional and a prerequisite of the right to maintain a proceeding under the Act. However, the legislature has mandated a liberal construction on the issue of notice. *S&H Floor Covering v. The Workers Compensation Commission*, 870 N.E.2d 821 (2007)

(1) Did an accident occur that arose out of and in the course of the Petitioner's employment with Respondent? And (4) Is the Petitioner's current condition of ill-being causally connected to this injury or exposure?

Petitioner's work as a welder required him to constantly work with his hands while welding door frames. His un rebutted testimony shows that he frequently grasped tools such as a hammer, a power grinder, and a welding gun. His grinding and buffing with the power grinder also exposed him to vibration on a frequent basis. He used these tools constantly while welding steel frames over the course of his eight-hour work day. Although the Petitioner testified that he made four frames per hour, and in breaking down how much time it took for each task he described a 95 minute time frame for assembling four doors, the un rebutted testimony of the Petitioner is that a majority of the time he is using the grinder to either grind or buff the frame, exposing him to a significant amount of vibration in his arms and hands each day.

The Arbitrator adopts the opinion of Dr. Ortinau that Petitioner's carpal tunnel syndrome is causally related to his work for Respondent. The Arbitrator rejects the opinion of Dr. Vender, who relied upon a job description that the Petitioner would only engage in welding for 25% of his work day and spent the rest engaged in supervisory duties. The evidence at trial demonstrated that Petitioner was only one of two welders left working for Respondent and spent his day welding, and using vibrating tools.

Based upon the above, the Arbitrator finds that the Petitioner's current condition of ill-being, namely his bilateral carpal tunnel syndrome, is causally connected to an accident which arose out of and in the course of his employment.

(2) What is the date of the accident?

The Arbitrator notes that in his Application petitioner alleged a date of accident of October 5, 2011. Petitioner later filed an Amended Application in which he alleged a date of accident of July 29, 2011. At the February 1, 2013, hearing of this case, petitioner was granted leave to amend his Amended Application on its face to allege a date of accident of July 30, 2011.

Petitioner testified that in 2011 while using a grinder his hands would get numb and that he would have to "shake them" out before this numbness would subside. Petitioner testified that after this numbness did not go away he saw Dr. Georgiev for this problem, and that Dr. Georgiev told him that he probably had carpal tunnel syndrome. Petitioner testified that he was not sure when this took place, but that he thought that it was in June or July of 2011. The Arbitrator notes that the medical records evidence that Dr. Georgiev saw the Petitioner for the first time, as a new patient on January 13, 2011, conducted a complete physical examination and diagnosed Petitioner with bilateral CTS at that time. On January 13, 2011, he prescribed vitamins for treatment of the CTS. Petitioner first testified that he knew, and later testified that he suspected, that his bilateral CTS was work-related when it was diagnosed by Dr. Georgiev.

In *Peoria County*, the Illinois Supreme Court held that determining the manifestation date is a question of fact and that the onset of pain and the inability to perform one's job are among the facts which may be introduced to establish the date of injury. The Illinois Supreme Court in *Peoria County* determined that the manifestation date/date of accident in that case was the date that petitioner's pain, numbness, and tingling in her hands and fingers was so severe that she sought medical treatment.

The manifestation date is not the date on which the injury and its causal link to work became plainly apparent to a reasonable physician, but the date on which it became plainly apparent to a reasonable employee. *Durand*, 224 Ill.2d at 72. A formal diagnosis, of course, is not required. *Id.* In *General Electric Company v. Industrial Comm'n*, 190 Ill.App.3d 847, 857, 546 N.E.2d 987 (4th Dist. 1989), the appellate court held that the employee's injury and its connection to her employment would have been plainly apparent to a reasonable person on the date she noticed a "sharp pain" in her shoulder while working, not on the subsequent date when a physician opined that the employee's condition and her work were causally related.

In *Consuelo Castaneda v. Industrial Comm'n*, 231 Ill.App.3d 734, 596 N.E.2d 1281 (3rd Dist. 1992), the petitioner first began noticing hand problems in April 1985 when performing wiring and soldering for the respondent. On April 26, 1985, the petitioner saw Dr. Subbiah complaining of numbness in the hands and told Dr. Subbiah that she related her symptoms to work. The petitioner missed some work and then returned to work and continued to complain of soreness and stiffness of her wrists and hands until June 19, 1987, when her position was discontinued and she was unable to perform other positions offered because of her hand condition. On September 8, 1988, Dr. Delacruz issued a neurological report indicating right CTS. The petitioner filed her claim with the Industrial Commission on September 26, 1988. The arbitrator found that the petitioner's manifestation date/date of accident was June 19, 1987, and awarded benefits. The Commission reversed the arbitrator, finding that the Petitioner's injury had manifested itself on April 26, 1985, and that the petitioner's claim filed on September 26, 1988, was barred by the three-year statute of limitations. The Circuit Court and the Appellate Court affirmed the Commission's decision.

Courts considering various factors have typically set the manifestation date on either the date on which the employee seeks medical treatment for the condition or the date on which the employee can no longer perform work activities. *Durand*.

In the instant case, Petitioner's bilateral CTS never progressed to the point that he was no longer able to perform his work activities; in fact, Petitioner was kept on full duty by his treating physicians even after they diagnosed Petitioner with bilateral CTS. Petitioner testified that he first noticed CTS symptoms in 2011 when he had numbness in his hands while using a grinder, and that he saw Dr Georgiev for this. Petitioner sought medical treatment from Dr. Georgiev for the first time on January 13, 2011, when the CTS was first diagnosed. On January 13, 2011, when Petitioner was seen by Dr. Georgiev, it was as a new patient. Dr. Georgiev conducted a complete physical examination and as part of his notes he diagnosed petitioner with bilateral CTS at that time, the only treatment recommended was B vitamins. It is not clear from the medical notes whether the Petitioner made any complaints about symptoms relating to his hands at the time. The medical records show several appointments with Dr. Georgiev and Petitioner between the January 13, 2011, visit and the July 30, 2011, visit wherein it is documented that Petitioner is complaining about the pain and numbness in his hands.

Petitioner admitted that he "knew" that his CTS were work-related when Dr. Georgiev diagnosed him with it. He later testified that he just "suspected" his CTS was work-related when Dr. Georgiev first diagnosed him with it.

Based upon the testimony and the evidence admitted at trial, the Arbitrator finds that January 13, 2011, is the "manifestation date," and thus the date of accident, for Petitioner's bilateral CTS. On that date Dr. Georgiev gave petitioner a complete physical examination, Dr. Georgiev performed tests on Petitioner for bilateral CTS, the tests were positive bilaterally, and Dr. Georgiev diagnosed Petitioner with paresthesia and bilateral CTS. The Arbitrator notes that petitioner testified that he at least suspected, if not knew, when he was diagnosed with bilateral CTS on January 13, 2011, that it was work-related.

(3) Was timely notice of the accident given to the Respondent?

The Arbitrator finds that petitioner's January 13, 2011, manifestation date/date of accident for his bilateral CTS would require Petitioner to notify Respondent by February 27, 2011, that he had bilateral CTS and that it was work-related. At trial Petitioner and Respondent stipulated that Petitioner first reported his alleged work accident to respondent on August 30, 2011. Consequently, the Arbitrator finds that petitioner did not report the January 13, 2011, work accident to respondent within the 45 days required by the Act.

In the instant case, the Petitioner notified the Respondent of the injury roughly seven months after the time required by the Act. Unlike the Petitioner in *Castaneda*, whose notification was made after the statute of limitations on the injury ran, the Petitioner in this case notified the Respondent within the statute of limitations for the injury. The courts have consistently applied the notification requirement liberally (*S&H Floor Covering*). Section 6(c) of the Illinois Workers' Compensation Act states that notice of the accident shall be given to the employer as soon as practicable, but not later than 45 days after the accident. Section 6(c) (2) states that "[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy." 820 ILCS 305/6(c)

The purpose of the notice provisions is to enable the employer to investigate promptly and to ascertain the facts of the alleged accident. (*City of Rockford*). The Respondent did not provide any evidence that they were prejudiced in any way by the defect in notice. The un rebutted testimony of the Petitioner is that the owner of the company actually tried to get the doctor's office to bill the group insurance rather than making it a worker's compensation case but was unable to do so. A court should decline to penalize an employee who diligently worked through progressive pain until it affected his or her ability to work and required medical treatment. (*Durand*) Absent a showing that the Respondent was unduly prejudiced, the timing of the notice given by the Petitioner is not a bar to receiving benefits.

Additionally, the Arbitrator notes that Section 8(j) of the Act tolls the time for giving notice where Petitioner receives benefits under Respondent's group health plan. This Section provides that where an injured employee receives benefits, including medical benefits under any group plan covering non-occupational disability benefits contributed to by the employer, then the time period for the giving of notice and the filing of an application for adjustment of claim does not commence to run until the termination of such payments.

Although the bills from Rezin Orthopedics were paid by Respondent under its workers' compensation plan (P. Ex. 2), the bills from the Ottawa Regional Medical Center were paid under Respondent's group health policy with Blue Cross (P. Ex. 1). According to the bills from the Ottawa Regional Medical Center, Petitioner's appointment with Dr. Georgiev on July 29, 2011 was paid by Blue Cross on August 10, 2011, the visit on August 30, 2011 was paid by Blue Cross on September 13, 2011, and the appointment on September 26, 2011 was paid by Blue Cross on October 12, 2011.

Section 8(j) of the Act tolls the time for giving notice where Petitioner receives benefits under Respondent's group health plan. This Section provides that where an injured employee receives benefits, including medical benefits under any group plan covering non-occupational

disability benefits contributed to by the employer, then the time period for the giving of notice and the filing of an application for adjustment of claim does not commence to run until the termination of such payments.

Based upon the above, the last payment by Respondent's group health plan was October 12, 2011. This is the date that Petitioner's 45 day period to provide notice began to run under Section 8(j) of the Act. The 45 day period would end on November 26, 2011. His first appointment with Dr. Ortinau was on October 20, 2011. Given his testimony that he had to report his condition as work related and have his appointment with Dr. Ortinau pre-approved under workers' compensation before he could see Dr. Ortinau, it is clear that he provided notice within the time required under Section 6(c) and Section 8(j).

(5) What were the Petitioner's earnings the year prior to the accidental injury and the average weekly wage?

The Petitioner failed to provide any evidence of his earnings during the year prior to his injury, based upon his proposed injury date of July 29, 2011 or July 30, 2011 or for any time before or after the injury.

The Respondent maintains that the Petitioner's date of injury was January 13, 2011, however the information provided by the Respondent regarding the Petitioner's pay begins approximately in September of 2010, (R. Ex. 1, which cuts off the number corresponding to the month the check was recorded) and goes through 9/29/11, rather than beginning in January of 2010 and ending in January of 2011, which would corresponds to the Respondent's proposed date of injury.

The Petitioner did testify that up until the last few months of 2011, when business started slowing down, he worked five days per week. R. Ex. 10 shows that from September 2010 until January of 2011, the Petitioner worked 80 hours and received \$1940.00 for the time period. There were 80 hour work periods during 2011, wherein the Petitioner received \$1940.00, as well. Assuming that rate of pay for the whole year before January 13, 2011, the Petitioner earned \$46,560.00. The average weekly wage would be \$895.38.

(6) Were the medical services that were provided to the Petitioner reasonable and necessary? Has the Respondent paid all appropriate charges for all reasonable and necessary medical services?

Petitioner failed to provide any evidence of unpaid medical bills. The Respondent entered a general denial of liability for any medical bills. Consequently no medical bills are awarded at this time.

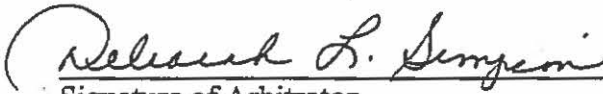
(7) Is the Petitioner entitled to any prospective medical care?

Dr. Ortinau has recommended Petitioner undergo surgery to treat his bilateral carpal tunnel syndrome. Dr. Vender agrees that is reasonable for Petitioner to undergo surgery, although he disagrees as to the issue of causation.

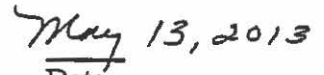
Having found in Petitioner's favor on the issue of causation and notice, the Arbitrator therefore finds that Petitioner is entitled to prospective medical care.

ORDER OF THE ARBITRATOR

The Arbitrator therefore orders Respondent to authorize Petitioner's surgery with Dr. Ortinau of Rezin Orthopedics and to pay the costs of the medical treatment pursuant to the Act.



Signature of Arbitrator



Date

STATE OF ILLINOIS)
) SS.
 COUNTY OF MC HENRY)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Debbie Beelart,

Petitioner,

14IWCC0029

vs.

NO: 12 WC 34259

Johnsburg District #12,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b-1) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, causal connection, prospective medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 5, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

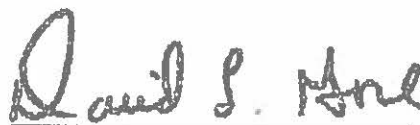
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

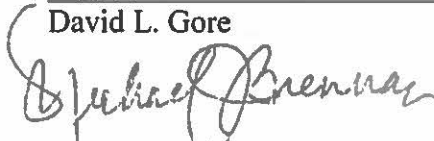
No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 21 2014

DLG/gal
O: 1/16/14
45



David L. Gore



Michael J. Brennan



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

BEELART, DEBBIE

Employee/Petitioner

Case# 12WC034259

14IWCC0029

JOHNSBURG DISTRICT #12

Employer/Respondent

On 6/5/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0247 HANNIGAN & BOTHA LTD
RICHARD D HANNIGAN
505 E HAWLEY ST SUITE 240
MUNDELEIN, IL 60060

0863 ANCEL GLINK
TIFFANY NELSON-JAWORSKI
140 S DEARBORN ST SUITE 600
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF McHenry)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0029

Case # 12 WC 34259

Debbie Beelart
Employee/Petitioner

v.

Consolidated cases: _____

Johnsburg District # 12
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Edward Lee**, Arbitrator of the Commission, in the city of **Woodstock**, on **5/3/2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☐ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
- M. ☒ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other _____

FINDINGS

14IWCC0029

On the date of accident, ~~5/1/2012~~, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$24,652.16; the average weekly wage was \$474.08.

On the date of accident, Petitioner was 54 years of age, *married* with 0 dependent children.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$9,165.45 for TTD, \$ for TPD, \$ for maintenance, and \$ for other benefits, for a total credit of \$.

Respondent is entitled to a credit of \$ under Section 8(j) of the Act.

ORDER

- The respondent shall pay temporary total disability benefits of \$316.05/week for 29 weeks, from 5/1/2012 through 11/19/2012, as provided in Section 8(b) of the Act, because the injuries sustained caused the disabling condition of the petitioner, the disabling condition is temporary and has not yet reached a permanent condition, pursuant to Section 19(b) of the Act.
- The respondent shall pay \$2,606.85 for medical services, and authorize the right cubital tunnel release with possible anterior ulnar nerve transposition and right carpal tunnel release, as provided in Section 8(a) of the Act.
- The respondent shall pay \$-0- in penalties, as provided in Section 19(k) of the Act.
- The respondent shall pay \$-0- in penalties, as provided in Section 19(l) of the Act.
- The respondent shall pay \$-0- in attorneys' fees, as provided in Section 16 of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

5/30/13

Date

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

19(b)

14IWCC0029

Debbie Beelart

Employee/Petitioner

v.

Johnsburg District # 12

Employer/Respondent

Case # 12 WC 34259

Consolidated cases:

The petitioner has filed an 8(a) Petition seeking an order directing the respondent to authorize surgery as prescribed by Dr. Patel on March 12, 2013. The specific surgery is a cubital tunnel release with possible anterior ulnar nerve transposition and also a right carpal tunnel release (Px. 2 pg.78-79). The respondent disputes the causal relationship between the need for this treatment based upon a lack of complaints of numbness and tingling that respondent believes were not documented until November 29, 2012 when Dr. Patel states, "The patient comes in with a new complaint of numbness and tingling" (Px.2 pg.82). The petitioner is also seeking payment of related medical expenses and penalties for failure to authorize treatment.

Finding of Facts

The petitioner is employed by the respondent as a janitorial custodian. On May 1, 2012, the petitioner tripped over a mop and fell on her out stretched right arm and wrist. This occurred just before midnight. She went to Northern Illinois Medical Center. She was diagnosed as having a fracture of the right distal radius and a strain of the right elbow. She was then referred to McHenry County Orthopedics. She saw Dr. Patel at McHenry County Orthopedic on May 3, 2012. His assessment was a right radial neck fracture and right wrist sprain. On May 17, 2012 x-rays of the right elbow revealed a proximal radial neck fracture. Physical therapy was prescribed and began on May 24, 2012. On September 25, 2012, Dr. Patel's records indicate that she had shaking in the right hand and she was concerned she may have a nerve injury. The doctor was not sure as to why she was having those problems five months after the injury. November 29, 2012, Dr. Patel noted she continued to have tingling and numbness, a positive Tinel sign at the

cubital tunnel as well as positive Phalen and Durkan's compression test over the carpal tunnel on the right. An EMG/NCV was prescribed and performed on February 6, 2013. The history noted right shoulder, elbow and hand pain following a fall and fracture of the right elbow. The test revealed mild right ulnar neuropathy at the elbow, right cubital tunnel and mild right carpal tunnel syndrome. (Px.3 pg.5) On February 12, 2013, Dr. Patel noted that there was intrinsic atrophy in thumb webspace. On that date she received a cortisone injection into the carpal tunnel. (Px.2 pg.80-81) On March 12, 2013, Dr. Patel's diagnosis was a right radial head neck fracture, healed right wrist sprain, right carpal tunnel syndrome, and right cubital tunnel syndrome. Symptoms include numbness and tingling diffusely in the hands including the small finger which wakes her up at night and when she holds a coffee cup she drops it and cannot feel what she is holding. When she is doing sweeping in her normal duties at work as a janitor she has diffuse pain that goes into the forearm and up into the shoulder region. It has gotten to the point that she cannot do her daily activities at work or at home. It is the doctor's belief that she exhausted conservative therapy and was a candidate for cubital tunnel release with possible anterior ulnar nerve transposition and also carpal tunnel release. The petitioner is desirous of this surgery.

The respondent had a Section 12 examination with Dr. Biafora on August 31, 2012. He noted improvement in the elbow pain and indicated she stated her right wrist pain was essentially resolved (petitioner denied she said that at trial). Dr. Biafora was of the opinion she would benefit from an additional three weeks of physical therapy to include strengthening. He indicated she could work with restrictions and that her treatment was work related.

On November 6, 2012, the petitioner had another section 12 evaluation with Dr. Biafora. He noted that she had been released to return to work without restriction but was in work hardening four hours per day and working four hours per day. He noted that the pain and subjective weakness had been improving. She still complained of soreness at the elbow and occasionally her wrist toward the end of work activities. His assessment was right radial neck fracture that is healed with right wrist pain resolved (again petitioner denied this). He felt she was at maximum medical improvement but anticipated some mild

improvement over the next couple of months. The work hardening evaluation of November 19, 2012 indicated that she could do bilateral lifting of 30 pounds, bilateral shoulder lifting of 25 pounds, and frequent bilateral lifting of 20 pounds. She demonstrated the ability to perform 87.9% of her physical demand of her job. She could work at the light medium level.

All of Dr. Patel's records indicate that the petitioner's onset of symptoms began May 1, 2012.

Time Line

April 24, 2001: Dr. Meletiou notes that she had suffered from a nondisplaced right distal radius fracture and she was discharged from the doctor's care at that time.

May 3, 2012: the petitioner indicates on the intake form that she has swelling, tingling, weakness, and instability with decreased range of motion. (Px.2 pg.13)

May 17, 2012: "in the wrist she also complains of some diffuse numbness and tingling." (Px. 2 pg.10) x-rays of the right elbow demonstrate a radial neck fracture with acceptable alignment. (Px.2 pg.18)

July 3, 2012: "she does not have numbness and tingling at night but with activities"

July 27, 2012: "the patient states that she has a numbness in her fourth and fifth fingers that increases with an increase in activity or with manual work" (Px.2 pg.55)

August 24, 2012: "the patient states that her right shoulder hurts from her anterior shoulder down to the wrist, the pain in her shoulders increases when she reaches overhead, behind her back".... "The patient reports that she has numbness in her fourth and fifth digits and a pulling sensation on the anterior right elbow that increases with elbow extension" (Px.2 pg.54)

August 31, 2012: Dr. Biafora indicated that she had sustained a radial neck fracture without significant angulation or displacement. He was of the opinion that the right wrist sprain had resolved. She was not at maximum medical improvement at that time.

September 25, 2012: "the patient states she does not have any numbness or tingling at rest." "I also suggested that she talk to her case manager in see if a second opinion is warranted." (Px.2 pg. 6-7)

November 6, 2012: Dr. Biafora indicates that she denied numbness and tingling when at rest.

November 7, 2012: "the patient reports that at times it feels as though her third, fourth and fifth digits feels like it is getting shut in a door. The patient reports that the muscle spasms have decreased when trying to write or do other fine motor skills although they are present about 25% of the time." Px. 2 pg.98)

November 29, 2012: "Patient comes in with a new complaint of numbness and tingling." The doctor's assessment was right radial neck fracture, right wrist sprain and right carpal tunnel syndrome. At that time he prescribed an EMG/NCV. The purpose of the EMG/NCV was to rule out cubital tunnel and carpal tunnel syndrome. (Px2 pg.94)

February 6, 2013: the petitioner reports pain in the right shoulder, elbow and hand following a fall in fracture of the right elbow. The petitioner had her EMG/NCV which was positive for right ulnar neuropathy at the ulnar groove and right median neuropathy that is typically seen in carpal tunnel syndrome. (Px2 pg.83)

February 12, 2013: Dr. Biafora opined that the petitioner did not need an EMG and it would not be work related.

March 12, 2013: Dr. Patel fills out the work status report for the workers compensation carrier and indicates that she has a right radial neck fracture, right wrist pain, right carpal tunnel syndrome and right cubital tunnel syndrome. He indicates that the treatment plan is surgery. (Px. 2 pg. 74) The patient still refers to this as "diffuse pain that goes into the

forearm and up to the shoulder region. She states that it is gotten to the point that she cannot do her daily activities at work nor at home.” (Px.2 pg.78)

Conclusion

Contrary to the respondent's position, the petitioner did, in fact, indicate she suffered from tingling when she first saw Dr. Patel on May 3, 2012. While Dr. Patel indicated on November 29, 2012 that she had a new complaint of numbness and tingling this is not true. On May 17, 2012, Dr. Patel specifically finds diffuse numbness and tingling. While Dr. Biafora stated on November 6, 2012 that there was no numbness or tingling this is not consistent with the November 7, 2012 report that her third fourth and fifth digits feel like they were being shut in a door, nor is it consistent with the physical therapy reports of numbness and tingling. While billing procedures are not indicative of causal connection, it is noted that Dr. Patel billed Sedgwick for the November 29, 2012 treatment. (Px.2 pg.72) While Dr. Biafora's physical examinations of the petitioner states she denied numbness and tingling it should be noted that on July 27, 2012 she reported to her therapist numbness in her fourth and fifth fingers which increases with activity. August 24, 2012, there is documentation of numbness in the fourth and fifth digits with a pulling sensation in the elbow. She then saw Dr. Biafora on August 31, 2012 he reports she denies numbness and tingling but in her testimony she denies that she told him that she had no numbness and tingling. September 25, 2012, there is documentation that she does not have numbness or tingling at rest. On November 6, 2012, Dr. Biafora indicates that she denied numbness and tingling yet on November 7, 2012 she reported that she had the feeling as if her third fourth and fifth digits were getting shut in a door. The treating records substantiate the petitioner's testimony that she did in fact have numbness and tingling and did not say that to Dr. Biafora.

The arbitrator notes that there is no evidence that the petitioner suffered from any numbness or tingling or any of her symptoms from the date she was hired by the respondent through May 1, 2012. As it pertains to her right upper extremity, she was in good health. Illinois courts have long held that, in workers' compensation proceedings, proof of prior good health and a change immediately following and continuing after an

injury may establish that an impaired condition was due to the injury. Waldorf v. Industrial Commission, 303 Ill. App. 3d 477, 708 NE 2d 476 (1999). As should be noted in the instant case, the chain of events herein indicates that the petitioner was able to perform her job without lost time or complaints prior to her work injury, that after the work injury she was ultimately unable to perform her job with symptoms only beginning post injury but continuing to date.

The Supreme Court of Illinois has stated on numerous occasions that one need not even present medical evidence in order to prove causal connection. International Harvester v. Industrial Commission 93 Ill. 2d 59, 442 N.E.2d 908, 66 Ill.Dec. 347 the Supreme Court held:

"This court has held that medical evidence is not an essential ingredient to support the conclusion of the Industrial Commission that an industrial accident caused the disability. A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury. (Martin Young Enterprises, Inc. v. Industrial Com. (1972), 51 Ill.2d 149, 155, 281 N.E.2d 305.) In Union Starch & Refining Co. v. Industrial Com. (1967), 37 Ill.2d 139, 144, 224 N.E.2d 856, this court said, "We know of no case requiring a doctor's testimony to establish causation and the extent of disability, especially where, as here, the record contains the company doctor's report and hospital records showing findings of the employee's personal physician which are consistent with the employee's testimony." When the claimant's version of the accident is uncontradicted and his testimony unimpeached, his recital of the facts surrounding the accident may be sufficient to sustain an award. Thrall Car Manufacturing Co. v. Industrial Com. (1976), 64 Ill.2d 459, 463, 1 Ill.Dec. 328, 356 N.E.2d 516."

14IWC0029

Based upon the totality of the evidence, petitioner's exhibits one through four, and the testimony the petitioner, it is a finding of the arbitrator that there is a causal connection between the petitioner's injury of May 1, 2012 and her subsequent need for a cubital tunnel release with possible anterior ulnar nerve transposition and carpal tunnel release the right upper extremity. The respondent is ordered to authorize said treatment with Dr. Patel.

Based upon the finding of causal connection the respondent is ordered to pay the medical expenses as listed in petitioner's exhibit number seven in the amount of \$2,606.85.

While the arbitrator finds in favor of the petitioner and against the respondent; the respondent's denial was based in good faith upon the report of Dr. Biafora and therefore penalties are denied.


Arbitrator Edward Lee

5/30/13
Date

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

<input checked="" type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Elizabeth Nieves,

Petitioner,

14IWCC0030

vs.

NO: 12 WC 34273

Church's Chicken,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b-1) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, prospective medical expenses, temporary total disability, causal connection, wage rate, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 26, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0030

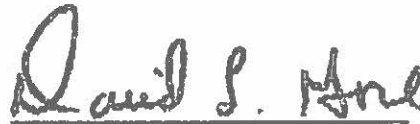
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$33,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: JAN 21 2014

DLG/gal
O: 1/16/14
45



David L. Gore



Michael J. Brennan



Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b-1) DECISION OF ARBITRATOR

NIEVES, ELIZABETH

Employee/Petitioner

Case# 12WC034273

CHURCH'S CHICKEN

Employer/Respondent

14IWCC0030

On 8/26/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

Unless a party does the following, this decision shall be entered as the decision of the Commission:

- 1) Files a Petition for Review within 30 days after receipt of this decision; and
- 2) Certifies that he or she has paid the court reporter \$ 634.78 for the final cost of the arbitration transcript and attaches a copy of the check to the Petition; and
- 3) Perfects a review in accordance with the Act and Rules.

If the Commission reviews this award, interest of 0.07% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0293 KATZ FRIEDMAN EAGLE ET AL
MARIA BOCANEGRA
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD
JEFF RUSIN
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

STATE OF ILLINOIS)

)SS.

COUNTY OF COOK)

- | | |
|-------------------------------------|---------------------------------------|
| <input type="checkbox"/> | Injured Workers' Benefit Fund (§4(d)) |
| <input type="checkbox"/> | Rate Adjustment Fund (§8(g)) |
| <input type="checkbox"/> | Second Injury Fund (§8(e)18) |
| <input checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

19(b-1)

14IWCC0030

Case # 12 WC 34273

ELIZABETH NIEVES

Employee/Petitioner

v.

Consolidated cases: _____

CHURCH'S CHICKEN

Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. Petitioner filed a *Petition for an Immediate Hearing Under Section 19(b-1) of the Act* on 5/17/13. Respondent filed a *Response* on 5/31/13. The Honorable Cronin, Arbitrator of the Commission, held a pretrial conference on 6/4/13, and a trial on 6/19/13, 6/21/13, in the city of Chicago. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to Respondent?
- F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
- G. ☒ What were Petitioner's earnings?
- H. ☐ What was Petitioner's age at the time of the accident?
- I. ☐ What was Petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. ☒ Is Petitioner entitled to any prospective medical care?
- L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
- M. ☒ Should penalties or fees be imposed upon Respondent?
- N. ☐ Is Respondent due any credit?
- O. ☐ Other

FINDINGS

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On the date of accident, 9/22/12, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

Petitioner average weekly wage is \$231.00.

On the date of accident, Petitioner was 37 years of age, *single* with 0 dependent children.

Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services.

ORDER

Respondent shall pay Petitioner temporary total disability (TTD) benefits of \$220.00/week for 36 weeks, commencing 10/13/2012 through 6/21/2013, as provided in Section 8(b) of the Act. Respondent shall be given a credit of for the temporary total disability benefits that have been paid.

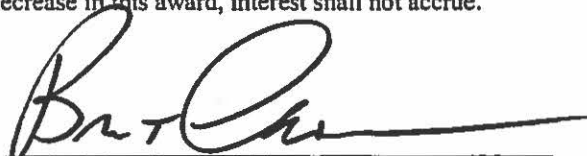
Respondent shall pay the charges of \$25,203.94 for the reasonable and necessary medical services rendered to Petitioner, as provided in Section 8(a) and subject to Section 8.2 of the Act.

Respondent shall authorize and pay the reasonable cost of the right shoulder arthroscopic surgery that Dr. Silver has recommended, pursuant to Section 8(a) and subject to Section 8.2 of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of temporary total disability, medical benefits, or compensation for a permanent disability, if any.

RULES REGARDING APPEALS Unless a party 1) files a *Petition for Review* within 30 days after receipt of this decision; and 2) certifies that he or she has paid the court reporter \$ or the *final* cost of the arbitration transcript and attaches a copy of the check to the *Petition*; and 3) perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator

August 22, 2013
Date

AUG 26 2013

Statement of Facts

Testimony of Elizabeth Nieves

The parties stipulated that Elizabeth Nieves, Petitioner, was an employee of Church's Chicken, Respondent, on September 22, 2012, and that she sustained an accident on that date for which notice was given. (Ax1).

On Saturday, September 22, 2012, Petitioner slipped and fell on a watery, oily substance. She was still holding the tray of chicken. The impact of her right arm with the floor produced pain in the arm that traveled up into her shoulder. (T.9-10). She also landed on her knees. Petitioner completed her shift in pain.

On September 23, 2012, Petitioner received a call from Veronica Herrera, a shift manager who asked her to work. Petitioner notified Veronica of her fall the night before. Petitioner thought that Veronica may have been completing an accident report during the conversation over the phone that Sunday.

Petitioner testified that she did not fill out the Report of Injury and that the information contained in it is not correct. (Px2). Specifically, the time of the accident was not correct. Moreover, she did not mention anything about an empty chicken bag and further, she did not only mention an injury to her knee.

On September 24, 2012, Petitioner began treating with Concentra (Ashland), where she had x-rays taken of the right shoulder and knee. (Px7). She was prescribed physical therapy, medications and light-duty work. Petitioner testified that she did not tell them she injured her left arm or that she slipped on an empty chicken bag. (T.17-18).

On October 23, 2012, she began treating with Dr. Westin of Concentra (Lake). (Px8). Dr. Westin prescribed medication, light-duty work and continued therapy at the Ashland location.

Petitioner testified she did not tell him that she injured her left arm or that she slipped on an empty chicken bag. Dr. Westin also ordered MRIs of the right knee and right shoulder.

On December 6, 2012, Petitioner began treating with Dr. Michael Foreman. (Px9). Dr. Foreman prescribed a right wrist brace, a TENS unit, medication, therapy and advised Petitioner to remain off of work. She was off of work per Dr. Foreman from 12/6/2012 – 1/3/2013. Petitioner testified that during her time with Dr. Foreman, she noticed improvement in the right knee, but felt that her right shoulder was not progressing and was getting worse.

In January 2013, Petitioner was seen by Dr. Ronald Silver at the request of Dr. Foreman. (Px10). Dr. Silver administered a shoulder injection for which Petitioner stated she felt only temporary relief. Dr. Silver recommended that Petitioner continue therapy and medication and advised her to stay off of work. Petitioner has been off of work per Dr. Silver since January 3, 2013. The records show that Dr. Silver is recommending a right shoulder arthroscopy for Petitioner.

Petitioner testified that she did not go back to Doctors Foreman and Silver because she has no income and no transportation. She testified that she experiences pain in her right arm/shoulder and has difficulty completing tasks at home. Regarding her right wrist, Petitioner testified that it feels better. Regarding her right knee, Petitioner testified that it feels better but that it is still painful to touch. She testified that prior to September 22, 2012, she had no problems, injuries or symptoms to any of the aforementioned body parts. She has not reinjured her arm/shoulder since September 22, 2012. Petitioner wants to undergo the surgery that Dr. Silver has recommended.

Petitioner testified she applied for work with Respondent in July 2012 at the 47th/Wood location. (T. 29-36). There, she completed a job application, interview and reviewed job

description forms with a shift manager named Olga Vieira. They discussed a training period of 28 days and that after, Petitioner would get her hours. Petitioner testified that Olga told her that after her training, she would have the same hours as the other employees. Petitioner took that to mean full time. Petitioner testified she was never told by Olga that she would be a part-time employee and that she reviewed her job description with Olga thinking it to be full time with an eight-hour work shift. Petitioner stated she was told by Olga her schedule was based on Monday thru Sunday workweek.

Petitioner transferred to the location where she slipped and fell. She was not re-interviewed. She did not re-apply. At the new location, she was not told she would be a part-time employee. From July 24, 2012 through September 21, 2012, Petitioner worked a total of 11 shifts, which ranged from 1.50 hours a shift to 7.86 hours a shift.

Testimony of Veronica Herrera

Veronica Herrera testified on the second date of trial on behalf of Respondent. She testified she was and is the General Manager of the Church's Chicken where Petitioner was injured.

She testified that part-time cooks generally work anywhere from 28 to 32 hours per week. She testified Petitioner was not hired full time, but on cross-examination, admitted that she did not interview or hire Petitioner.

Regarding light-duty work and scheduling, Ms. Herrera testified that she makes out the work schedule and that employees call on Sundays to obtain their work schedules for the upcoming week. Ms. Herrera testified that when Petitioner worked light-duty, she trained as a cashier and may have completed cleaning duties such as mopping. On cross-examination, she

admitted that Petitioner attempted to call her to obtain her work schedule and that Ms. Herrera told Petitioner she was too busy to help her and to call back. (T.27-28).

Petitioner testified she attempted to call to get the schedule but Herrera did not return her calls.

Ms. Herrera testified that she did not know if Church's Chicken had a formal, light-duty program for injured employees.

Regarding the accident report, Ms. Herrera testified that Petitioner told her she injured her knee and did not mention her shoulder. Later, Petitioner brought Ms. Herrera paperwork that mentioned her shoulder. On cross-examination, Ms. Herrera agreed that Petitioner told her she had slipped and fallen and that Petitioner did not tell her she had slipped and fallen on an empty bag of chicken. (T.20-21). Ms. Herrera stated she did not review the accident report with Petitioner. On re-direct examination, Petitioner clarified that Ashley was present at the time of the slip-and-fall accident, but did not actually witness it as her back was turned to Petitioner. Petitioner testified that Ashley spun around to face Petitioner when Ashley heard the loud noise from the fall.

Testimony of Vicki Blancett

Vicki Blancett testified via telephonic deposition on behalf of Respondent. She testified she is Human Resource Manager for Falcon Holdings, LLC. Falcon Holdings, LLC, owns approximately 150 Church's Chicken locations. She testified that all non-managerial employees are hired part-time only as a company-wide policy and that Petitioner was part-time. She testified that each new hire goes through training and that training schedules must be flexible and vary widely on a case-by-case basis. She testified that she coordinated a light-duty schedule with

Veronica Herrera for Petitioner but never directly spoke with Petitioner about that light-duty work.

Conclusions of Law

(F) Is Petitioner's Current Condition of Ill-Being Causally Related to the Injury?

The parties stipulated to the issues of employee-employer relationship, accident and notice. The issue at arbitration concerns whether Petitioner's current conditions of ill-being, primarily of her right shoulder, are causally related to the September 22, 2012 slip-and-fall accident. For the reasons that follow, the Arbitrator finds that Petitioner's right knee, right wrist and right shoulder conditions are causally related to her slip-and-fall accident of September 22, 2012.

Petitioner credibly testified that she slipped and fell on September 22, 2012 while carrying a metal tray of chicken from the walk-in cooler at work. She testified that she landed on "four", which the Arbitrator takes to mean "all fours." Petitioner stated that her right arm made contact with the floor. She stated that the tray of chicken weighed 50 lbs. and stayed in her arms as she fell. Her arms impacted the floor. She stated that she felt a pain go up her arm.

The Arbitrator finds Petitioner's testimony consistent with her treating medical records. The Arbitrator disregards the reference to a left arm in Concentra as a clerical/scrivener's error. Petitioner complained immediately to her treaters of pain the right wrist, right shoulder and right knee. Concentra diagnosed contusions of all three initially.

Regarding the accident report, the Arbitrator places less weight on the accident report that Veronica Herrera completed. In it, Ms. Herrera only identifies Petitioner's knee as the injured body part. Veronica acknowledged she also obtained information with regard to the accident from the witness Ashley.

Petitioner sought timely and reasonable treatment for the right wrist and right knee.

Regarding the right shoulder, the medical records indicate that Petitioner was initially diagnosed with a contusion. Dr. Westin (Concentra) diagnosed a persistent right shoulder strain. He believed the fall created the scapulothoracic sprain.

Petitioner eventually underwent her shoulder MRI while under the care of Dr. Foreman. The MRI showed a partial thickness undersurface tear with tendinopathy.

Petitioner continued conservative measures and her medical records document no significant improvement in the right shoulder.

Petitioner underwent a subacromial injection under the care of her current treating physician, Dr. Silver. She received only temporary relief. Dr. Silver recommended a right shoulder arthroscopy following failed conservative care.

Petitioner was seen by Dr. Kevin Walsh at the request of Respondent. Dr. Walsh opined Petitioner's right shoulder tear was degenerative in nature. Petitioner was also seen by Dr. Kevin Tu, at the request of Petitioner's Counsel. Dr. Tu opined that her mechanism was consistent with acute tear. Dr. Tu agreed with Dr. Silver and the need for surgery.

After carefully reviewing the medical record and reports, the Arbitrator assigns more weight to the opinions of Petitioner's treating doctors. The Arbitrator assigns greater weight to the opinions of Dr. Tu than he does to those of Dr. Walsh.

The Arbitrator finds Dr. Walsh's opinion with regard to the issue of causation to be far from compelling given the mechanism of injury, the chain of events, the MRI results, Petitioner's age, her lack of prior symptoms of, or treatment for, right shoulder pain and her lack of other risk factors.

The Arbitrator finds that Petitioner's current condition of ill-being of her right shoulder is causally related to her September 22, 2012 slip-and-fall accident and further, that Petitioner's need for right shoulder arthroscopy is directly related to her September 22, 2012 accident.

(J) Were the Medical Services Provided to Petitioner Reasonable and Necessary? Has Respondent Paid All Appropriate Charges for All Reasonable and Necessary Medical Services?

As he has found in favor of Petitioner on issue of causation, the Arbitrator awards Petitioner all outstanding medical bills outlined in the Request for Hearing form (Ax1) and in Petitioner's bill summary (Px13), pursuant to Section 8(a) and subject to Section 8.2 of the Act. The Arbitrator specifically finds the bills to be reasonable, necessary and related to Petitioner's medical care with each of her treaters as a result of the September 22, 2012 slip-and-fall accident.

(K) Prospective Medical Care

The Arbitrator awards the right shoulder arthroscopy that Dr. Ronald Silver has recommended. The medical records support Petitioner injury to her right shoulder when her arm struck the floor. Petitioner has undergone extensive conservative care from which she has experienced minimal, temporary relief.

Based upon the medical records, the opinions of Dr. Tu and the opinions of Dr. Silver, the Arbitrator finds the right shoulder arthroscopy to be necessary to relieve or cure Petitioner of her current condition of ill-being.

(L) Temporary Total Disability Benefits

As the Arbitrator has found in favor of Petitioner on the aforementioned issues, the Arbitrator awards Petitioner TTD benefits from October 13, 2012 through June 21, 2013.

Ms. Herrera testified that sometime after Petitioner sustained the slip-and-fall injury, she did not show up for her scheduled work. She testified that Petitioner told her that she did not have any money to come to work.

Ms. Herrera admitted that she told Petitioner she was too busy to talk to Petitioner when Petitioner called. She also admitted that she did not return Petitioner's call and inform her of her work schedule. Ms. Herrera stated she did not send any light-duty job offer letters via mail to Petitioner. Ms. Herrera was not aware of a formal light-duty program at Church's Chicken.

In rebuttal, Petitioner testified that after her last date worked, October 12, 2013, she had difficulty communicating effectively with Ms. Herrera regarding her light-duty work schedule.

During Petitioner's rebuttal, the following exchange took place:

Q: And towards the end of the last time that you worked there, were you able to ever get ahold of whatever your schedule was?

A: When I was calling her.

Q: Did she tell you what the schedule was?

A: No.

Q: Did she ever write you a letter giving you whatever the schedule was?

A: No, never. When I was showing up to work, I was going in person. Like I mentioned before, I was giving her in person the restriction order from the doctor; but when I was trying to call her, like she just mentioned, she told me, I don't have no time to talk to you, call me later. When I decided to call later, she never answered or called me back and I was leaving messages.

The Arbitrator finds Petitioner's testimony to be credible.

The Arbitrator notes Petitioner's resume', which is included in her personnel records.

(Px3).

The medical records show that beginning on December 6, 2012, Petitioner was taken off of work by her treating physicians. She has remained off of work as of the dates of trial.

(G) What were Petitioner's Earnings? (O) Other – Average Weekly Wage (AWW) Calculation

The parties differ as to the proper method of calculating Petitioner's average weekly wage ("AWW") under Section 10. In Ax 1, Petitioner asserted an AWW of \$400.00 and Respondent asserted an AWW of \$44.48. (Ax1).

Section 10 of the Act provides, in part, that the AWW shall be calculated based on the *last full pay period preceding* the work injury. The evidence shows Petitioner earned gross wages from 7/24/12 – 9/9/12 in the amount of \$274.07. This was earned over a total of 11 shifts. Since workweeks ran from Monday to Sunday, the records show Petitioner worked these 11 shifts over 6 separate workweeks.

The evidence show that for much of her time with Respondent, Petitioner was in a training program. As such, she worked reduced hours. She also switched restaurant locations.

In Sylvester v. Indus. Comm'n, 197 Ill. 2d 225, 756 N.E.2d 822 (2001), the Supreme Court reiterated the four different methods for calculating average weekly wage for which Section 10 of the Act provides. With regard to the fourth method, the Court wrote: "Finally, if the employment has been of such short duration or the terms of the employment of such casual nature that it is 'impractical' to use one of the three other methods to calculate average weekly

wage, 'regard shall be had to the average weekly amount which during the 52 weeks previous to the injury, illness or disablement was being or would have been earned by a person in the same grade employed at the same work for each of such 52 weeks for the same number of hours per week by the same employer.'

The Court addressed the employer's "windfall" argument and found such argument to be unpersuasive.

The Court found Senator Bruce's comment regarding the calculation of average weekly wage for a part-time employee to be of little relevance.

Near the end of their decision, the Court opined:

The point of the fourth method is clearly to allow an employer to demonstrate how much an established employee would have earned, when the petitioner's work situation does not provide a sufficiently reliable basis so to find.

Based upon the wages submitted into evidence in the case at bar, the Arbitrator finds it impractical to utilize these earnings records for the purposes of calculating average weekly wage. The records demonstrate Petitioner worked sporadic hours and changed stores. Vicki Blancett testified that training hours usually were for four-hour shifts, but that a schedule varied due to sales, scheduling discretion and training and was set on a case-by-case basis. The Arbitrator further finds that Petitioner's total length of employment spanned only 11 shifts.

Vicki Blancett testified that part-time employees can work eight-hour shifts for three days per week, or four days per week at most.

Respondent witness Veronica Herrera testified that newly hired cooks go on to work normal hours of anywhere between 24 to 32 hours.

During Vicki Blancett's deposition, Exhibit 1 was submitted into evidence that showed work schedules for several employees for pay period 11/5-11/18. (Rx4, Ex. 1). Each work schedule was broken down by date and by the number of hours for each employee. Those records show that Petitioner's co-workers worked 6.5 hours up to 8 hours per day, thereby corroborating Respondent's witness' testimony that following training, Petitioner would have gone on to work anywhere from 24 - 32 hours per week. For example, co-worker Nisha was scheduled for at least 35.5 hours during that time. Co-worker Reyna was scheduled for at least 41 hours that period. Co-worker Eddie was scheduled for 37 hours that period. Co-worker Yvette was scheduled for at least 34 hours that period.

Petitioner testified that Olga Vieira, her first manager, told her that after her training, she would have the same hours as the other employees. Petitioner further testified that her rate of pay at the time she was hired was \$8.25/hour.

Thus, based upon the facts and the law, the Arbitrator concludes that the fourth method of calculating the AWW is the appropriate method. Consequently, the Arbitrator finds that Petitioner's AWW at Church's Chicken was \$231.00 (= 28 hours per week x \$8.25/hour).

(M) Should penalties or fees be imposed upon Respondent?

The Arbitrator declines to impose penalties and fees against Respondent since Respondent had a reasonable basis to dispute the amount of TTD owed based upon the foregoing issues of AWW. Moreover, Kevin Walsh, M.D., Respondent's Section 12 examiner opined that the proposed right shoulder surgery is not necessary.

Despite the weight the Arbitrator gives to Dr. Walsh's opinions, i.e., little or none, Respondent *did* have Dr. Walsh examine Petitioner on March 26, 2013 and Dr. Walsh *did* opine

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that this 37-year-old Petitioner's right partial-thickness rotator cuff tear, as shown on the MRI, was more likely than not a degenerative condition and not a post-traumatic condition.